

**KARAGANIS, WHITE & MAGEL LTD.
MEMORANDUM**

WRITER'S DIRECT DIAL:
(312) 836-1177 EXT. 150

WRITER'S E-MAIL:
BWHITE@K-W.COM

➤ Via Personal Delivery

To: Enza Petrarca
Kevin Buoy
From: Bruce White
Date: August 8, 2003
Subject: Ellsworth – Executed Signature Pages for Three Party Agreement

Per our 8/6 memos, we are delivering herewith the originals of the signature pages for the Three Party Agreement executed by the participating parties. It is our understanding that a copy of the complete Three Party Agreement, with copies of all executed signature pages including those of the Village and County will be returned to us as soon as possible thereafter.

If you have any questions, please feel free to give me a call.

enclosures

cc: w/o enclosures via fax w/enclosures via first class mail)

Tom Krueger ✓

RoseMarie Cazeau/Beth Wallace

Participating Parties

EPA Region 5 Records Ctr.



265634

RESOLUTION NO. 2003-61

**A RESOLUTION AUTHORIZING AN AGREEMENT AMONG THE
VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY
AND CERTAIN PARTICIPATING COMPANIES**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Agreement (the "Agreement"), between the Village of Downers Grove (the "Village"), DuPage County (the "County") and certain Participating Companies (the "PRPs"), for the implementation of water service to areas of DuPage County, as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.

2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.

3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.

4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Mayor

Passed:

Attest: _____
Village Clerk

AGREEMENT AMONG THE VILLAGE OF DOWNERS GROVE, DUPAGE COUNTY AND CERTAIN PARTICIPATING COMPANIES

This Agreement, entered into as of the ____ day of July, 2003, by and between the Village of Downers Grove, a municipal corporation created and existing under the laws of the State of Illinois (the "Village"), DuPage County, a municipal corporation created and existing under the laws of the State of Illinois (the "County"), and each of the Participating Companies listed on Schedule 1 (the "PRPs")

WITNESSETH

Whereas the Village owns and operates a water distribution system (the "System") which is supplied with water by the DuPage Water Commission (the "DWC") pursuant to the terms of a certain Water Purchase and Sale Contract dated as of June 11, 1986 between the Village and the DWC; and

Whereas the Village and the DWC entered into an Intergovernmental Agreement effective as of October 11, 2002 in an effort to create a method of providing an adequate supply of Lake Michigan water to residents within the Village and adjacent unincorporated areas of the County that are accessible to the Village's System which, they believe, may be affected by contaminated well water (the "Primary Service Area"), a copy of which is attached hereto and made a part hereof as Attachment A (the "Enabling Agreement"); and

Whereas the Village and the DWC entered into a further Intergovernmental Agreement effective as of April 15, 2003, whereby DWC has agreed to loan money to the Village to pay the cost of constructing certain improvements to the System (the "Improvements") that will enable the Village to serve properties within the Primary Service Area, a copy of which is attached hereto and made apart hereof as Attachment B (the "Implementing Agreement"); and

Whereas the County has determined that there are approximately 800 residences within the Primary Service Area to be hooked up to the System, which area is depicted on Attachment C (and which includes residences within the Village and within unincorporated DuPage County), attached hereto and made apart hereof (the "Hookups"); and

Whereas pursuant to the Implementing Agreement, the "Improvements" include the construction of approximately 3,000 linear feet of 8 inch water main and approximately 1,200 linear feet of 12 inch water main (collectively the "North Belmont Park Mains") with all necessary appurtenances (i.e., service from the B-Boxes to the residences and sealing of residential wells) to serve those portions of the Primary Service Area for which no Existing Mains (as defined in the Enabling Agreement) of the Village exist and, in those portions of the Primary Service Area for which Existing Mains of the Village do exist, the necessary number of B-boxes and all necessary appurtenances (i.e., service from

the B-Boxes to the residences and sealing of residential wells) to serve those residences; and

Whereas the County and Village have entered into contracts with qualified bidders to provide the labor and materials required to construct the Improvements; and

Whereas, the County and Village have determined that the cost of constructing the Improvements and necessary appurtenances, including Village permit and connection fees and properly sealing all existing drinking water wells in the Primary Service Areas (but excluding Village Connection Charges and the Illinois Environmental Protection Agency grant previously awarded to the Village for construction of the North Belmont Park Mains) should not exceed \$4.275 million; and

Whereas, the PRPs have entered into an Administrative Order on Consent with the USEPA (the "AOC") under which the PRPs have agreed to arrange for funding of up to \$4.275 million to pay the anticipated cost of principal and interest payments on the loan from the DWC to the Village to fund the construction of the Improvements; and

Whereas, the Village, County and PRPs desire to set forth in this Agreement the terms and conditions whereby funds borrowed by the Village from the DWC pursuant to the Implementing Agreement shall be used to pay the costs to construct the Improvements, and whereby the PRPs shall arrange to repay up to \$4.275 million of loans from the DWC to the Village used for such purposes, as the payments of principal and interest become due.

Now Therefore, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereby agree as follows:

Section 1. Preamble

The foregoing recitals are by reference incorporated herein and made a part hereof as if fully set forth herein.

Section 2. Designation of Project Coordinators

At the time of execution of this Agreement, the Village, County and PRPs shall each designate a Project Coordinator ("PC") who shall coordinate administration of all actions required of the parties under this Agreement. The three PCs shall serve as a liaison and point of contact for issues that arise in connection with performance of this Agreement. The parties agree that the PCs shall have no personal liability in connection with activities undertaken within the scope of their project coordination responsibilities. The parties shall have the right to change their respective designated PCs upon written notice to the two other parties.

Section 3. Condition Precedent to the Parties' Obligations

All of the obligations of the Village, County and PRPs under this Agreement are conditioned on the adoption by the County, prior to July 31, 2003, of an ordinance requiring owners of residential drinking water wells within the Primary Service Area (identified on Attachment C) to connect to a public water supply and seal wells. The ordinance shall be in form substantially similar to Attachment E to this Agreement. The date of adoption of such ordinance shall be the effective date of this Agreement. ("Effective Date").

Section 4. Obligations of the Village.

- A. Within 60 business days after the Effective Date, the Village, with the assistance of the County, shall establish and begin to implement procedures to obtain consent of owners of residential drinking water wells within the Primary Service Area (identified on Attachment C) to hookup their residences to the System to receive public water supply and to permanently close their residential drinking water wells. The form of such consent shall be substantially the same as Attachment D to this Agreement.
- B. The Village shall be responsible for design, construction, acceptance and approval of payment for the Improvements in accordance with the provisions of the Implementing Agreement; provided, however, that the parties understand and agree that (1) the Village is going to be directly responsible for design, construction, acceptance and approval of payment for the North Belmont Park Mains and B-Boxes on those mains, and (2) the Village is assigning to the County and the County is accepting responsibility for supervising design, construction, acceptance and approval of payment for installation of B-boxes and all necessary appurtenances (i.e., service from the B-Boxes to the residences and sealing of residential wells) to serve residences in those portions of the Primary Service Area where Existing Mains of the Village do exist and where the North Belmont Park Mains are being added. The Village agrees that for purposes of the Improvements only, the County and its contractors may couple the new service line from the B box to the existing service line at the residents' wells, where the County and the contractor determine that such connection would be most practical and cost effective. It is understood and agreed by the parties that the PRPs shall have no responsibility for design, construction, acceptance or approval of payment for the Improvements, or for supervising any such activities.
- C. The Village shall use its best efforts to assure that the construction of the North Belmont Park Mains is completed and that all residents within the Primary Service Area (Attachment C) are hooked up to public water supply as expeditiously as practicable, and in no event later than December 31, 2004, unless such date is extended by mutual agreement of

the parties. The Village's agreements with the contractors for construction of the North Belmont Park Mains shall include the Village's standard general conditions in use as of the Effective Date (which are incorporated herein by reference) with the addition of the following:

- The County, PRPs, USEPA, and the State shall be named as additional insureds on all contractor and subcontractors insurance policies.
- The County, PRPs, USEPA, and the State shall be named as additional beneficiaries of any performance bond posted by any contractors or subcontractors.
- The County, PRPs, USEPA and the State shall be indemnified and held harmless by all contractors and subcontractors to the same extent as the Village.

- D. The Village shall borrow funds from the DWC, in accordance with the terms of the Implementing Agreement, to pay the cost of design and construction of the Improvements and necessary appurtenances, including Village permit and connection fees (but excluding Village Connection Charges, as that term is defined in Section 25-40 of the Village's Municipal Code, and the Illinois Environmental Protection Agency grant previously awarded to the Village). It is anticipated that the Village will draw funds from the DWC quarterly in advance of such payments being due; and in any event, the Village shall draw funds from DWC in such manner as to minimize interest charges as much as practicable.
- E. Within 48 hours of receipt of certification from the County that it has approved payments to contractors for work on the portion of the Improvements supervised by the County, the Village shall transfer funds from the loan proceeds to the County to make such approved payments. The Village and the PRPs shall be entitled to rely on the County certifications. Such certification shall be signed by a duly authorized official of the County. The PRPs shall have the right to review the Village and County's books and records relating to all such payments.
- F. The Village shall coordinate with the PRPs on the schedule and procedure to be followed with respect to the payments to be made by the PRPs of principal and interest on the loan to the Village from the DWC. In no event shall the PRPs be responsible for making repayment of more than \$4.275 million (in the aggregate) of any such loan.
- G. To the extent that the Village seeks to assess Connection Charges on residences within the Primary Service Area hooked up after the Effective Date, the Village shall be solely responsible for authorizing, invoicing and collecting such charges.

- H. The Village shall be solely responsible for the sale of water to residential users within the Primary Service Area (Attachment C) after they have hooked up to the public water supply.

Section 5. Obligations of the County

- A. The County shall be responsible for supervising design, construction, acceptance and approval of payment for installation of B-boxes and all necessary appurtenances (i.e., service from the B-Boxes to the residences and sealing of residential wells) to serve residences in those portions of the Primary Service Area where Existing Mains of the Village do exist and where the North Belmont Park Mains are being added in accordance with the provisions of the Implementing Agreement. The County shall coordinate scheduling of the hookups with the residents, the Village and their respective contractors.
- B. The County shall use its best efforts to assure that the construction of the portion of the Improvements described in paragraph 5(A) above is completed and that all residents within the Primary Service Area (Attachment C) are hooked up to public water supply as expeditiously as practicable, and in no event later than December 31, 2004, unless such date is extended by mutual agreement of the parties.
- C. The County shall provide to USEPA, the State, and the PRPs, or cause its contractors to provide, monthly progress reports of all significant developments during the preceding monthly period, including the actions performed and any problems encountered, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.
- D. The County shall submit for review by the USEPA, the State, and the PRPs, or cause its contractors to submit, within sixty (60) business days after substantial completion of all hookups within the Primary Service Area (Attachment C), a final report summarizing the actions taken to provide hookups and the costs thereof. This final report shall conform, to the extent applicable, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in performing the hookups. The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

- E. Agreements with the contractors for construction of the Improvements shall include the County’s standard general conditions in use as of the Effective Date (which are incorporated herein by reference), with the addition of the items set forth in paragraphs 4(B),(C), and (D) above, and the following:
 - The Village, PRPs, USEPA, and the State shall be named as additional insureds on all contractor and subcontractors insurance policies.
 - The Village, PRPs, USEPA, and the State shall be named as additional beneficiaries of any performance bond posted by any contractors or subcontractors.
 - The Village, PRPs, USEPA and the State shall be indemnified and held harmless by all contractors and subcontractors to the same extent as the County.
- F. The procedure for approval of payments to contractors for construction of the Improvements shall be substantially the same as those set forth in the County’s standard general conditions in use as of the Effective Date. The County shall certify that such procedures have been followed at the time that payments are approved and applications for payments are submitted by the County to the Village.
- G. The County shall take such action as may be necessary (including, without limitation, prosecution in courts of competent jurisdiction), at its sole cost and expense, to enforce the ordinance requiring owners of residential drinking water wells within the Primary Service Area (identified on Attachment C) to connect to a public water supply and seal wells.
- H. The County shall allocate, for construction of the Improvements, a minimum of 80% of the \$431,000 appropriation it has received from the United States (which funds are to be paid out to the County through the USEPA grants program), for infrastructure to help address TCE contamination in DuPage County. The County shall promptly make application to USEPA for such grants. Such grant funds shall be applied to the earliest incurred capital costs of the Improvements, including but not limited to payment of the Village’s local share portion of the infrastructure additions in the Primary Service Area, and the costs of the County’s contracts for installation of B-boxes and all necessary appurtenances.
- I. The County agrees that in the event the cost of the Improvements, after crediting all applicable federal, State and local grant funds received, exceeds the PRPs’ \$4.275 million loan repayment commitment, the County shall make payments of principal and interest, as they come due, on up to an additional \$400,000 the Village may be required to borrow from DWC

to pay for completion of the Improvements. The parties' agree that the Village and the PRPs that sign this Agreement shall not be responsible for payment of such overages. The parties shall cooperate in good faith to obtain funds to pay for such overages as soon as practicable through additional federal, state and/or local grants, from additional potentially responsible parties identified by USEPA (that are not signatories to this Agreement), and lastly from residents.

- J. The County has identified qualified contractors willing and able to undertake the work herein contemplated. By separate agreements with said contractors, the County will attempt to secure their commitment to make an irrevocable offer to the Owners to do the above-described work at the prices herein noted. The contractors may contract directly with those Owners willing to participate in the Project with the County-selected contractor. It is understood and agreed that the County shall and, or, the Village may, act as escrow agent for and between the contractors and the participating Owners. Owners not participating shall be required, per the ordinance, to obtain private water service line connections at their own expense.

Section 6. Obligations of the PRPs

- A. As required by the AOC, the PRPs shall arrange for funding of principal and interest payments on up to \$4.275 million of the loan from the DWC to the Village to fund the construction of the Improvements. The PRPs will establish an escrow to pay interest that accrues for at least the first two years, and until such time as the hookups are completed and the USEPA completes its screening of properties in Ellsworth Industrial Park; and thereafter, when the loan repayment schedule has been finalized, the PRPs will purchase an annuity or other financial mechanism to make the remaining payments as they come due. Anything herein to the contrary notwithstanding, nothing in this Agreement is intended to or shall be construed to expand the scope of the PRPs' Work obligations, as defined in paragraph 8(d) of the AOC.
- B. Subject to the limitations set forth below in this paragraph 6(C), The PRPs agree to indemnify, defend and hold the Village harmless for lawsuits filed, within two (2) years of substantial completion of the hookups (i.e. completion of the hookups to the maximum extent practicable, as set forth in paragraph 14.c of the AOC), claiming that Connection Charges assessed by the Village to residences within the Primary Service Area (Attachment C) hooked up after the Effective Date are arbitrary, capricious, unreasonable, or usurious. The obligation of the PRPs to the Village shall be limited to a total of \$1,000,000 in the aggregate, for defense costs and indemnity.

- C. It is understood and agreed by all parties that the PRPs' obligations under this Agreement are limited to funding, and that that the PRPs have no responsibility for design, construction, acceptance or approval of payment for the Improvements. The Village, County and the DWC, and their respective contractors and subcontractors, shall in no event be deemed or construed to be agents, representatives, contractors, or subcontractors of the PRPs.

Section 7. Mutual Covenants Not to Sue

- A. In consideration of the obligations of the PRPs set forth herein, the Village and County covenant not to sue or prosecute the PRPs, or any of them, under federal, state or local statute, law, ordinance, rule, or regulation, or common law, for any matters relating to the Improvements; provided, however, that this covenant shall not preclude an action by the Village or County to enforce this Agreement. Without limitation of the foregoing, the County and Village covenant not to sue the PRPs to recover, in whole or in part: (a) the grant funds allocated to the project as provided in paragraph 5(H); (b) the portion of the loan from DWC to the Village guaranteed by the County, as provided in paragraph 5(I); (c) any other costs to provide public drinking water supply to residents within the Primary Service Area beyond the \$4.275 million obligation of the PRPs set forth in this Agreement and the AOC, including without limitation, costs to improve, operate, or maintain the System within the Primary Service Area.
- B. In consideration of the obligations of the Village and County set forth herein, the PRPs, and each of them, covenant not to sue or prosecute the Village and County, or either of them, under federal, state or local statute, law, ordinance, rule, or regulation, or common law, for any matters relating to the Improvements; provided, however, that this covenant shall not preclude an action by the PRPs against the Village and/or the County (a) to enforce this Agreement or (b) for contribution in the event that investigation discloses that the Village or County is potentially liable under CERCLA for hookup costs.
- C. The parties agree that in the event of breach of this Agreement or default in any of its provisions, the parties reserve all rights and remedies they may have at law or in equity to enforce the terms of this Agreement; provided, however, that no party shall be entitled to recover consequential damages from any other party.
- D. The parties expressly reserve any and all claims and actions they may have against each other that are not within the scope of the mutual covenants not to sue provided for in Section 7 of this Agreement, including but not limited to claims for contribution against each other in the event claims for property damage or personal injury are made by third

parties. Anything herein to the contrary notwithstanding, the PRPs, and each of them, shall satisfy their funding obligations under paragraph 6.A. above regardless of their reservations of rights in this Section 7 to bring contribution actions against the Village or County.

- E. Each party expressly reserves any and all claims and actions it may have against any person or entity that is not a party to this Agreement, and nothing in this Agreement is intended or shall be construed to diminish or impair such rights.

Section 8. General

- A. **Cooperation and Further Agreements.** The parties agree to meet and cooperate in good faith throughout the term of this Agreement to implement the letter and spirit of the provisions set forth in this Agreement.
- B. **Notices.** All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in any main or branch United States post office, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

Notices and communications shall be addressed to, and delivered at, the address of the notice recipients for each party specified on their respective signature pages.

The foregoing shall not be deemed to preclude the use of other non-oral means of notification or to invalidate any notice properly given by any such other non-oral means.

By notice complying with the requirements of this Section, the parties each shall have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address shall be effective until actually received.

- C. **Entire Agreement.** This Agreement sets forth the entire agreement of the parties regarding the terms and conditions whereby funds borrowed by the Village from the DWC pursuant to the Implementing Agreement shall be used to pay the costs to construct the Improvements, and whereby the PRPs shall arrange to repay up to \$4.275 million of loans from the DWC to the Village used for such purposes, as the payments of principal and interest become due. There are no other understandings or agreements, oral or written, by or between the Village, County and PRPs with respect thereto, nor was the making and execution of this Agreement induced by any representation, statement, warranty, agreement, or action other than those expressed or explicitly referenced in this Agreement.

- D. No Waiver. No course of dealing or failure of any party to enforce strictly any term, right, or condition of this Agreement shall be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Agreement shall operate as a waiver of any other term, right, or condition.
- E. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish, or impose any legal duty to any third party.
- F. No Admission. Nothing herein shall be deemed or construed to be an admission of liability or of any matter of fact or law by any of the parties to this Agreement.
- G. No party shall unreasonably delay deny or withhold any review, notice, consent, approval required by this Agreement.
- H. Governing Law. This Agreement shall be governed by and construed exclusively under the applicable laws of the State of Illinois, without regard to conflicts of law principles.
- I. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one of the parties hereto so long as each of the parties hereto has signed one or more of such counterparts.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers, pursuant to proper authorization of their respective governing bodies, as of the date first stated above.

DUPAGE COUNTY

By: _____

Its: _____

VILLAGE OF DOWNERS GROVE

By: _____

Its: _____

[PRP_____]

By: _____

Its: _____

Address for Notice:

1\mw\agr.03\PRPgreement-fin

**AGREEMENT AMONG THE VILLAGE OF DOWNERS GROVE, DUPAGE
COUNTY AND CERTAIN PARTICIPATING COMPANIES**

ATTACHMENTS

- | | |
|---------------|---|
| Attachment A: | October 11, 2002 Enabling Agreement between the Village and DWC |
| Attachment B: | April 15, 2003 Implementing Agreement between the Village and DWC |
| Attachment C: | Map of the Primary Service Area |
| Attachment D: | Form of Access and Waiver Agreement |
| Attachment E: | Form of County Hookup Ordinance |

VCP17

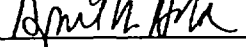
RESOLUTION NO. 2002-85

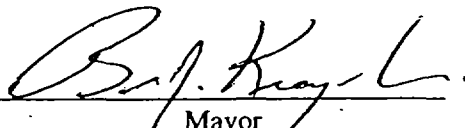
**A RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL
AGREEMENT FOR THE PROVISION OF LAKE MICHIGAN WATER TO AREAS OF
DUPAGE COUNTY AFFECTED BY CONTAMINATION**

BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain a Intergovernmental Agreement (the "Agreement"), between the Village of Downers Grove (the "Village"), DuPage County (the "County") and the DuPage Water Commission (the "Commission"), to make Lake Michigan water available to certain areas of DuPage County affected by contamination, as set forth in the form of the Agreement submitted with the recommendation of the Village Manager, is hereby approved.
2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.
3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.
4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.
5. That this Resolution shall be in full force and effect from and after its passage as provided by law.

Passed: October 1, 2002

Attest: 
Village Clerk


Mayor

AUGUST 8, 2002
DRAFT

INTERGOVERNMENTAL AGREEMENT

FOR THE PROVISION OF

LAKE MICHIGAN WATER TO

AREAS OF DUPAGE COUNTY

AFFECTED BY CONTAMINATION

THIS INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF LAKE MICHIGAN WATER TO AREAS OF DUPAGE COUNTY AFFECTED BY CONTAMINATION (this "Agreement") is made as of _____, 2002, by and between the DuPage Water Commission, Counties of DuPage, Cook, and Will, Illinois (the "Commission"), a commission and public corporation under Division 135 of Article 11 of the Illinois Municipal Code and the Water Commission Act of 1985; the County of DuPage, Illinois (the "County"), a body corporate and politic; and those units of local government of the State of Illinois hereafter defined as the "Charter Customers," as each executes this Agreement.

ARTICLE ONE

RECITALS

WHEREAS, the Commission is a public corporation created under the Water Commission Act of 1985, as amended, and Division 135 of Article 11 of the Illinois Municipal Code, and is authorized to enter into contracts and agreements relating to the purchase and supply of water pursuant to the laws of the State of Illinois; and

WHEREAS, the County is a unit of local government, organized and existing under and by virtue of the laws of the State of Illinois; and

WHEREAS, the Charter Customers are units of local government, organized and existing under and by virtue of the laws of the State of Illinois; and

WHEREAS, the Charter Customers have entered into a Contract with the Commission to purchase Lake Water sufficient to meet the water supply needs of the Charter Customers and others (the "Water Purchase and Sale Contract" as hereafter defined); and

WHEREAS, pursuant to Article VII, Section 10 of the Illinois Constitution of 1970, and the Intergovernmental Cooperation Act, as amended, the Commission, the County, and the Charter Customers are authorized to enter into this Agreement; and

WHEREAS, certain areas of the County have been affected by contaminated water, which poses a significant threat to the health and safety of numerous individuals; and

WHEREAS, subject to certain limitations, each of the Commission, the County, and the Charter Customers are authorized by law to engage in the retail sale of water to areas of the County affected by contaminated well water; and

WHEREAS, the Commission, the County, and the Charter Customers, desire to create a method of providing an adequate supply of Lake Michigan water to areas of the County affected by contamination;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE TWO

DEFINITIONS

2.1. "Agreement" means this Intergovernmental Agreement for the Provision of Lake Michigan Water to Areas of DuPage County Affected by Contamination.

2.2. "Charter Customer" means a unit of local government of the State of Illinois (not including the Commission) that is a party to the Water Purchase and Sale Contract, excluding, however, any such unit of local government whose rights and obligations under the Water Purchase and Sale Contract have been terminated.

2.3. "Commission" means the DuPage Water Commission, Counties of DuPage, Cook, and Will, Illinois.

2.4. "Connection Costs" has the meaning set forth in Section 5.2.

2.5. "County" means the County of DuPage, Illinois.

2.6. "Customer" means any person who purchases Lake Water from a Charter Customer pursuant to this Agreement solely for use by that person and not for redistribution or resale.

2.7. "Customer Costs" has the meaning set forth in Section 5.2.

2.8. "Effective Date" means the effective date of this Agreement, as defined in Section 8.1.

2.9. "Existing Main" means a water main, existing or under construction on the Effective Date of this Agreement, of a Charter Customer from which a Customer within a Service Area can receive service under the terms and conditions of this Agreement without the need for the Charter Customer to construct a New Main.

2.10. "Lake Water" means potable, filtered water drawn from Lake Michigan.

2.11. "MCL" means a maximum contaminant level as determined in accordance with Section 3.2.

2.12. "Market Rate" means the average cost of borrowing of the Commission.

2.13. "New Main" means a water main and related infrastructure, not existing or under construction on the Effective Date of this Agreement, constructed by a Charter Customer for the purpose of providing service to a Service Area under the terms and conditions of this Agreement. New Main shall not include a water main constructed by a Charter Customer exclusively for reasons other than providing service under the terms of this Agreement.

2.14. "Pathway Service Area" has the meaning set forth in Section 3.2.

2.15. "Potential Customer" means any Customer or any other person currently requiring water service on property located within a Service Area. For purposes of this definition, property currently requiring water service includes property for which a building permit has been issued.

2.16. "Primary Service Area" has the meaning set forth in Section 3.2.

2.17. "Professional Fees" has the meaning set forth in Section 5.2.

2.18. "Recapture Costs" has the meaning set forth in Section 5.2.

2.19. "Secondary Service Area" has the meaning set forth in Section 3.2.

2.20. "Service Area" means either a Primary Service Area, a Secondary Service Area, or a Pathway Service Area. The term Service Area will be used in provisions of this Agreement that are intended to apply to any type of Service Area, regardless of whether it is a Primary Service Area, a Secondary Service Area, or a Pathway Service Area. When a provision of this Agreement is intended to apply specifically to a Primary Service Area, specifically to a Secondary Service Area, or specifically to a Pathway Service Area, the appropriate term will be used.

2.21. "Service Costs" means Service Provision Costs, Recapture Costs, Connection Costs, Customer Costs, and Professional Fees.

2.22. "Service Provision Costs" has the meaning set forth in Section 5.2.

2.23. "Source Well" has the meaning set forth in Section 3.2.

2.24. "Task Force" means the Commission task force established for the purpose of advising the Commission on the implementation of this Agreement, or if no longer in existence, shall mean the Commission or any other committee or task force of the Commission so delegated.

2.25. "Water Allocation" means, with respect to a Charter Customer, such Charter Customer's allocation and allowable excess from time to time of Lake Water pursuant to the Level of Lake Michigan Act, as amended from time to time (See the State of Illinois Department of Transportation, Division of Water Resources Decision on 1989 Allocation Review, Order No. LMO 89-2 and subsequent orders of the State of Illinois Department of Transportation, Division of Water Resources, or the successor to its responsibilities, the State of Illinois Department of Natural Resources, Office of Water Resources); and such other amounts of Lake Water as such Charter Customer may lawfully take.

2.26. "Water Purchase and Sale Contract" means the water purchase and sale contract, dated June 11, 1986, between the Commission and the Charter Customers, as amended or supplemented from time to time.

ARTICLE THREE

AREAS TO BE SERVED

3.1. Provision of Lake Water to Service Areas. Charter Customers will provide, and Customers may receive, Lake Water in conformance with the terms and conditions described in this Agreement.

3.2. Service Areas. Service Areas shall be determined by the Commission, with the advice of the Task Force, as follows. If, as a result of testing conducted pursuant to Section 3.3, a well is located that exhibits a level of any regulated chemical that exceeds maximum contaminant level ("MCL") as determined by the National Primary Drinking Water Regulations, 40 C.F.R. § 141.1 *et seq.*, of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and/or the regulations related to the Illinois Pollution Control Board in 35 Ill. Admin. Code 620.105 *et seq.* (the "Source Well"), the Commission shall retain an engineer, with the advice of the Task Force, who shall conduct additional testing. If, upon completion of the additional testing, the engineer determines that:

a. over fifty percent (50%) of the sampled wells in an area emanating from the Source Well have levels of any regulated chemical that exceed MCL as determined by the National Primary Drinking Water Regulations, 40 C.F.R. § 141.1 *et seq.*, of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and/or the regulations related to the Illinois Pollution Control Board in 35 Ill. Admin. Code 620.105 *et seq.*, then that area shall be designated by the Commission as a "Primary Service Area."

b. in an area that the Commission determines to be in reasonable proximity to a Primary Service Area:

i. over fifty percent (50%) of the sampled wells contain detectable concentrations of the same regulated chemical as determined by the National Primary Drinking Water Regulations, 40 C.F.R. § 141.1 *et seq.*, of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and/or the regulations related to the Illinois Pollution Control Board in 35 Ill. Admin. Code 620.105 *et seq.*, that is found in the reasonably proximate Primary Service Area; or

ii. over fifty percent (50%) of the sampled wells have levels of any regulated chemical as determined by the National Primary Drinking Water Regulations, 40 C.F.R. § 141.1 *et seq.*, of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and/or the regulations related to the Illinois Pollution Control Board in 35 Ill. Admin. Code 620.105 *et seq.*, which contain detectable concentrations but do not exceed MCL and which, after reviewing an engineer's report, the Commission determines are substantially likely to exceed MCL in the reasonably foreseeable future,

then that area shall be designated by the Commission as a "Secondary Service Area."

Notwithstanding the requirements of Section 3.2.a., the Commission may designate an area as a Primary Service Area if the engineer retained by the Commission determines that a significant life, safety, or health risk related to human consumption of water is posed in the area or is likely to be posed in the future. Upon designation by the Commission, service under the terms of this Agreement shall be offered

to all Primary Service Areas and Secondary Service Areas, as well as, in the case of service from New Mains, to the area along the pathway of the New Main that is not either a Primary Service Area or a Secondary Service Area ("Pathway Service Area"). The Commission has the authority to split a Service Area into one or more Service Areas if the Commission, with the advice of the Task Force, determines that it is more practical to provide service to a Service Area through the combination of one or more New Mains or Existing Mains. For each Service Area, an implementing agreement will be prepared and approved by the County, the Commission, and the Charter Customer that is to provide service to the Service Area. The implementing agreement for each Service Area will include: (a) financing terms prepared in accordance with Section 5 of this Agreement; (b) terms and conditions specific to the provision of service by the Charter Customer to the particular Service Area; and (c) a map of the Service Area, which shall be the definitive source regarding the boundaries of the Service Area and shall govern any disputes that arise concerning locations to be served in the Service Area. Without regard to any other provision of this Agreement, no party hereto shall be obligated to take any action pursuant to this Agreement until the County, the Commission, and the Charter Customer asked to provide Lake Water, have entered into an implementing agreement. The decision whether or not to enter into an implementing agreement shall be within the sole and absolute discretion of each party.

3.3. Testing for Contamination. The County will oversee the process of testing for contamination. Testing will be conducted by laboratories certified for chemical analysis of potable water by the Illinois Environmental Protection Agency Division of Laboratories.

3.4. Payment of Costs for Testing. The County will be responsible for paying or seeking reimbursement for the costs of testing for contamination.

3.5. Commission Reimbursement for Certain Contamination Testing Costs. To the extent that the County anticipates that it will:

- a. incur costs that are out of the ordinary or in excess of the County's current budget for contamination testing; or
- b. be unable to obtain reimbursement from other sources,

it may, prior to conducting testing, submit a request to the Commission for consideration of reimbursement of such costs from the Commission. This request will be reviewed by the Task Force, which shall make a recommendation to the Commission as to whether Commission reimbursement is appropriate. If the Commission approves reimbursement, the costs will be allocated by the Commission, whenever possible, to the cost of providing service to the Service Area in which testing was conducted.

ARTICLE FOUR

PROVISION OF SERVICE

4.1. Service from an Existing Main. If an Existing Main can be used to provide service to a Service Area, the Charter Customer that owns the Existing Main will make Lake Water available to the Service Area from the Existing Main, provided, however that if, in any Service Area, an intergovernmental agreement has been entered into pertaining to the Existing Main, then that intergovernmental agreement shall govern and shall determine which Charter Customer will make Lake Water available to the Service Area from the Existing Main.

4.2. Service from a New Main. If an Existing Main is not available to provide service to a Service Area, the closest adjacent Charter Customer, to the extent not prohibited by law or existing intergovernmental or boundary agreement, shall make Lake Water available through the construction of a New Main in order to provide Lake Water to the Service Area. If the closest adjacent Charter Customer is unable to make Lake Water available through the construction of a New Main, because the Charter Customer is prohibited from doing so by law or existing intergovernmental or boundary agreement, then another adjacent Charter Customer shall make Lake Water available through the construction of a New Main.

If:

- a. there is no Charter Customer adjacent to a Service Area; or
- b. all Charter Customers adjacent to a Service Area are unable to make Lake Water available through the construction of a New Main, because all Charter Customers adjacent to a Service Area are prohibited from doing so by law or existing intergovernmental or boundary agreement; or
- c. if the Charter Customers adjacent to a Service Areas are unable to agree to a method of making Lake Water available through the construction of a New Main,

then the Commission, with the advice of the Task Force, will determine the method by which Lake Water will be made available through the construction of a New Main.

4.3. Task Force Advisory Role. The Task Force shall advise the Commission regarding the provision of service under this Agreement, which shall include, but not be limited to, advising the Commission on the methods of determining costs of and financing for service described in Article 5 of this Agreement and advising the Commission on the terms of service described in Article 6 of this Agreement.

ARTICLE FIVE

COSTS OF AND FINANCING FOR SERVICE

5.1 Financing Process. After a Service Area is designated, Service Costs related to providing service shall be determined and a means of providing financing for service shall be made available as set forth below. The Task Force shall advise the Commission on the process of determining Service Costs and arranging financing for each Service Area.

5.2. Determination of Service Costs. The Task Force shall advise the Commission on Service Costs for each Service Area. The final determination of Service Costs for each Service Area shall be determined by the Commission. These Service Costs may vary based upon field contingencies related to each Service Area. The Service Costs shall consist of the following components:

- a. reasonable engineering, construction, and property acquisition costs incurred by the County, the Commission, or the Charter Customer related to providing service to a Service Area ("Service Provision Costs");

b. reimbursement of the Charter Customer for actual costs previously expended for construction of Existing Mains used to provide service to a Customer, as contained in the ordinances of the Charter Customer ("Recapture Costs");

c. reasonable connection costs and other fees that a Customer must pay in order to receive service from a Charter Customer, which the Task Force shall recommend and the Commission shall determine for each Customer of a Service Area ("Connection Costs");

d. reasonable costs incurred by each Customer in order that the Customer's property may receive service from a New Main or an Existing Main, which the Task Force shall recommend and the Commission shall determine for each Customer of a Service Area ("Customer Costs"); and

e. reasonable professional fees allocated to the Service Area as described in Section 5.3 ("Professional Fees") (Service Provision Costs, Recapture Costs, Connection Costs, Customer Costs, and Professional Fees are collectively referred to as "Service Costs").

If a portion of a New Main or an Existing Main is used to serve an area that is not a Service Area, then the Service Costs for the Service Area shall be reduced accordingly on a proportionate basis. Separate determinations of residential Service Costs and commercial and industrial Service Costs may be made for each Service Area.

5.3. Professional Fees. Professional Fees shall include reasonable legal fees, limited to those borne by the County, the Commission, and the Charter Customers, related to negotiating, executing, and preparing the Agreement, which shall be reimbursed by the Commission. Professional Fees shall also include: (a) public relations fees related to encouraging Potential Customers from a Service Area to receive service, as described in Section 6.6, and (b) contamination testing costs, as described in Section 3.5, for which the Task Force shall make a recommendation and the Commission shall make a final determination that they be:

a. allocated over all Service Areas to which service is provided;

b. allocated to a particular Service Area to which service is provided, if the Professional Fees directly relate to the provision of service to a particular Service Area;

c. reimbursed by the Commission from a reserve established by the Commission; or

d. neither allocated pursuant to Section 5.3.a. or Section 5.3.b. nor reimbursed pursuant to Section 5.3.c.

5.4. Special Service Areas. For each Service Area in which service shall be provided, the County will have the option of proposing and implementing a special service area. If the County chooses not to propose and implement a special service area, it shall give notice to the Charter Customer that is to provide service to the Service Area and the County and the Charter Customer that is to provide service to the Service Area will confer as to whether the implementation of a special service area is appropriate. If the County and the Charter Customer that is to provide service to the Service Area cannot agree as to whether implementation of a special service area is appropriate, the appropriateness of implementation of a special service area will be submitted to the Task Force, which shall make a

recommendation to the Commission, which shall determine whether a special service area will be pursued in the Service Area. The Commission will provide financing for Service Costs for each special service area that is created as described in this Section 5.4. on the same terms (i.e. interest rate and maturity date) as described hereafter in Section 5.5. The Service Costs for each special service area that is created as described in this Section 5.4 shall be determined as described above in Section 5.2, and shall also include reasonable costs incurred by the County related to the establishment and operation of the special service area, which costs shall be determined as described above in Section 5.2. The County and the Charter Customer that is to provide service to the Service Area will cooperate in billing and collecting any Service Costs payable as a result of each special service area that is created as described in this Section 5.4. A Charter Customer will have the option of proposing and implementing a special service area with the same rights, terms, and conditions that apply to the County under this Section 5.4.

5.5. Loans from Commission to Charter Customers. If:

- a. after the completion of the process described in Section 5.4, a special service area is not pursued; or
- b. the implementation of a special service area is rejected in a Service Area; or
- c. for any other reason, a special service area cannot be implemented in a Service Area,

then the Commission shall provide twenty (20) year loans to the Charter Customer that provides service to the Service Area at a rate of two percent (2%) per annum for the residential Service Costs related to the Service Area and at the Market Rate for the commercial and industrial Service Costs related to the Service Area. The Commission will provide funds to Charter Customers either through the Commission's cash on hand or via the issuance of the Commission's revenue bonds. Interest payments will be due annually during the period of the loan, beginning in year one. Principal payments of equal installments will be due annually, beginning six years after the loan is made. The Charter Customer will be required to pay the Commission at least the following amount annually: the total amount of interest and principal due that year multiplied by the number of Customers in the Service Area divided by the number of Potential Customers in the Service Area. If any Charter Customer debt remains after the twenty (20) year loan period concludes, the Commission shall extend the terms of the loan made to the Charter Customer for a commercially reasonable period, provided the Charter Customer is not in default.

5.6. Charter Customer Charges to Customers. A Charter Customer may charge each Customer no more than each Customer's proportionate share of Service Costs based on the number of Potential Customers in a Service Area, provided, however, that if, in a Service Area in which service is to be provided via a New Main, the implementation of a special service area is rejected, then the proportionate share of Service Costs that the Charter Customer may charge each Customer shall be no more than the following amount: the total amount of Service Costs for the Service Area divided by nine-tenths (9/10) of the number of Potential Customers in the Service Area (unless more than nine-tenths (9/10) of the number of Potential Customers in the Service Area are Customers, in which case a Charter Customer may charge each Customer no more than each Customer's proportionate share of Service Costs based on the number of Potential Customers in the Service Area). If at any time the number of Potential Customers in a Service Area exceeds the number of Potential Customers in the Service Area at the time proportionate shares are initially calculated, then the proportionate share of

each Customer in the Service Area shall be adjusted accordingly. A Charter Customer may, with Commission approval, adjust the charges for each Customer based on factors such as the water consumption of each Customer and whether the Customer is a residential or commercial or industrial Customer.

5.7. Loans from Charter Customers to Customers. Each Charter Customer receiving a loan from the Commission shall offer twenty (20) year loans to residential Customers at a rate of two percent (2%) per annum for each residential Customer's proportionate share of Service Costs, as determined in accordance with Section 5.6. Interest payments will be due annually during the period of the loan, beginning in year one. Principal payments of equal installments will be due annually beginning six years after the loan is made. Each Charter Customer shall offer twenty (20) year loans to commercial and industrial Customers at the Market Rate as of the date of the loan for each commercial or industrial Customer's proportionate share of Service Costs, as determined in accordance with Section 5.6. Interest payments will be due annually during the period of the loan, beginning in year one. Principal payments will be due annually beginning six years after the loan is made. If the proportionate share of each Customer in a Service Area is adjusted pursuant to Section 5.6, then the loan amounts and repayment amounts will be recalculated accordingly. The twenty (20) year loan term shall apply only to Customers who enter into loan agreements when loans are initially offered in a Service Area. Customers who enter into loan agreements after loans were initially offered in a Service Area shall have only the remaining number of years to repay the loan as Customers who entered into loan agreements when loans were initially offered. For example, if the loan is taken in year 1, the Customer shall have twenty (20) years to repay the loan; if the loan is taken in year 5, the Customer shall have fifteen (15) years to repay the loan. Furthermore, Customers who enter into loan agreements after loans were initially offered in a Service Area shall be responsible for interest payments as if they entered into a loan agreement when loans were initially offered. For example, if the loan is taken in year 1, the Customer shall begin paying interest in year 1 through the term of the loan; if the loan is taken in year 5, the Customer shall be responsible for paying interest for years 1-4, as well as paying interest from year 5 through the term of the loan. The form of the loan agreement offered by a Charter Customer to a Customer will be reviewed by the Commission prior to its use.

5.8. Potential Grant Programs. The Task Force shall advise the Commission as to the extent to which grants may be available (a) to assist in providing financing for the provision of service in each Service Area, and (b) to assist Customers from Service Areas who are unable to afford Customer Costs.

5.9. Grants to Customers. The County and the Charter Customer that provides service to a Service Area will cooperate in order to obtain and distribute grants to assist Customers who satisfy applicable grant criteria.

ARTICLE SIX

TERMS OF SERVICE

6.1. Lake Water to be Made Available as Soon as Practicable. A Charter Customer will make Lake Water available as soon as practicable from its existing Water Allocation to a Service Area.

6.2. Condition of Service to Secondary Service Areas. If service can only be provided to a Secondary Service Area through a New Main, then, as a condition of being eligible to receive service under the terms of this Agreement:

- a. a special service area, as described above in Section 5.4, must be implemented in the Secondary Service Area; or
- b. if the implementation of a special service area is rejected in a Secondary Service Area, or for any other reason a special service area cannot be implemented in a Secondary Service Area, at least seventy percent (70%) of property owners within the Secondary Service Area must sign a pre-annexation agreement or a water service or water loan agreement with the Charter Customer providing service to the Secondary Service Area.

If these conditions are not met and service under the terms of this Agreement is not provided in a Secondary Service Area, the County and the Charter Customer that was to provide service to the Secondary Service Area shall be reimbursed by the Commission for reasonable costs related to attempting to provide service to the Secondary Service Area, such as, but not limited to, engineering costs and costs related to preparation of establishment of a special service area.

6.3. Service from an Existing Main. Pursuant to the other terms of this Agreement, Charter Customers shall offer access to an Existing Main:

- a. immediately after a Customer from a Service Area signs a pre-annexation agreement with the Charter Customer, if such an agreement is required by the Charter Customer as a condition of receiving Lake Water; or
- b. within ninety (90) days of the execution of this Agreement, if a pre-annexation agreement is not required by the Charter Customer.

6.4. Service from a New Main. Within thirty (30) days of the date that a Service Area becomes eligible for service from a New Main, or by the date determined by the Commission if the Charter Customer submits, and the Commission approves, a written request to the Commission for an extension of the thirty (30) day period, the Charter Customer serving the Service Area shall provide a schedule to the County that shall include necessary engineering and construction considerations, including projected completion dates, related to construction and installation of the New Main. If the County determines that the project completion date for the construction of the New Main is unacceptable because (a) of life, safety, and health concerns of the County related to providing Lake Water to the Service Area, and (b) the County has the ability to provide service to the Service Area more rapidly, then the County may submit a request to the Task Force to expedite the construction of the New Main. The Charter Customer may submit evidence to the Task Force and the Commission regarding the reasonableness of the Charter Customer's proposed project completion date. The Task Force shall make a recommendation to the Commission regarding whether the County's request should be granted. The Commission shall review the Task Force's recommendation and shall determine whether to approve the County's request. If the Commission approves the County's request, the New Main will be built to the specifications of the Charter Customer providing Lake Water to the Service Area. Upon completion, the New Main will be dedicated by the County to the Charter Customer providing service to the Service Area. The Commission will reimburse the County for its share of Service Costs related to providing

service to the Service Area in the same manner as the Charter Customer is reimbursed. The Commission will charge these costs to the Charter Customer providing service to the Service Area. In order to repay these costs, the Charter Customer will be entitled to a loan from the Commission and the Customers in the Service Area will be entitled to a loan from the Charter Customer under the terms described in Article Five of this Agreement. To the extent not expressly provided for herein, the County and each Charter Customer do not waive any legal rights to act independently from this Agreement in order to construct New Mains or to take any other actions necessary to provide water service.

6.5. Notice to Potential Customers from Service Areas. After a method of financing service is determined for a Service Area, the Charter Customer providing service to the Service Area shall give notice of the Service Costs to Potential Customers from the Service Area. Potential Customers offered Lake Water from an Existing Main shall have a period of no less than ninety (90) days from the date that Service Cost information is sent to them for initial consideration of whether they wish to receive service from the Charter Customer. Potential Customers offered Lake Water from a New Main shall have a period of no less than six months from the date that Service Cost information is sent to them for initial consideration of whether they wish to receive service from the Charter Customer. Service Cost information shall be determined as described above in Sections 5.2 and 5.3.

6.6. Cooperation Concerning Customers. The County, the Commission, and the Charter Customers shall cooperate in efforts to maximize the number of Customers from Service Areas who receive Lake Water. Such cooperation shall include, but not be limited to: (a) public relations activities and other forms of publicity detailing the benefits of receiving Lake Water; (b) establishing a public record that an area is contaminated and notifying property owners of the contamination; and (c) such other activities upon which the County, the Commission, and the Charter Customers agree.

6.7. Cooperation Concerning Property Acquisition. The County, the Commission, and the Charter Customers shall cooperate in acquiring property rights necessary to provide service under the terms of this Agreement.

6.8. Limitations on Conditions and on Annexation. A Charter Customer may require that each Customer enter into a pre-annexation agreement or, where annexation is not a condition of service, a water service or water loan agreement with the Charter Customer as a pre-condition of receiving Lake Water from the Charter Customer under the terms of this Agreement. Any such agreement shall not require annexation earlier than ten years from the end of the respective initial consideration periods described in Section 6.5. During the period before annexation, a Charter Customer will not require implementation of any conditions on the provision of Lake Water to a Customer, except those set forth in a pre-annexation agreement that are allowed by generally applicable laws, ordinances, rules, and regulations related to the receipt and use of Lake Water (such as sprinkling limitations and sanitary plumbing requirements). Except as provided herein, Charter Customers do not waive any annexation rights to which they may be entitled under State law or under pre-existing annexation agreements or pre-annexation agreements.

6.9. Right to Discontinue Service. To the extent authorized by law, Charter Customers shall have the right to discontinue service to any Customer of a Service Area who receives Lake Water from the Charter Customer if the Customer of the Service Area:

- a. fails to meet regular payment obligations for Lake Water;

- b. fails to pay appropriate costs related to the costs of receiving service, including the Customer's share of Service Costs; or
- c. breaches a pre-annexation agreement with the Charter Customer.

Furthermore, to the extent authorized by law, a lien will attach to the property of the Customer of the Service Area in the amount that the Customer is in default to the Charter Customer providing Lake Water.

6.10. Ability to Charge Differential Rate. A Charter Customer may provide Lake Water to Customers of a Service Area at a differential rate than to a Charter Customer's own municipal customers so long as the rate is not unreasonably discriminatory as described in Illinois common law.

ARTICLE SEVEN

DEFAULTS AND REMEDIES

7.1. Commission Default and County and Charter Customer Remedies. The occurrence of the following shall constitute a default by the Commission under this Agreement: failure by the Commission to observe and perform any covenant, condition, or agreement on its part to be observed or performed hereunder and the continuation of the same for thirty (30) days after the Commission's receipt of written notice thereof from either the County or any Charter Customer (which notice shall be provided to all parties to this Agreement); provided, however, if such matter cannot with due diligence be remedied by the Commission within such thirty (30) day period, and the Commission shall have diligently prosecuted the remedying of such failure within such thirty (30) days, such period shall be extended by such additional time period as may be reasonably required by the Commission to cure or correct such matter.

If the Commission defaults under this Agreement, the remedies of a Charter Customer or the County, as affected, shall be limited to an action in equity against the Commission to enforce or compel performance of this Agreement and actions for mandamus and specific performances of the Commission's obligations to the extent allowed by law. Election of any permitted remedy shall not be a waiver of any other permitted remedy, but each of the other parties to this Agreement agree that it will not seek, and does not have the right to seek, a judgment or to recover a judgment for monetary damages against the Commission.

7.2. County Default and Commission and Charter Customer Remedies. The occurrence of the following shall constitute a default by the County under this Agreement: failure by the County to observe and perform any covenant, condition, or agreement on its part to be observed or performed hereunder and the continuation of the same for thirty (30) days after the County's receipt of written notice thereof from either the Commission or any Charter Customer (which notice shall be provided to all parties to this Agreement); provided, however, if such matter cannot with due diligence be remedied by the County within such thirty (30) day period, and the County shall have diligently prosecuted the remedying of such failure within such thirty (30) days, such period shall be extended by such additional time period as may be reasonably required by the County to cure or correct such matter.

If the County defaults under this Agreement, the remedies of a Charter Customer or the Commission, as affected, shall be limited to an action in equity against the County to enforce or compel performance of this Agreement and actions for mandamus and specific performances of the County's

obligations to the extent allowed by law. Election of any permitted remedy shall not be a waiver of any other permitted remedy, but each of the other parties to this Agreement agree that it will not seek, and does not have the right to seek, a judgment or to recover a judgment for monetary damages against the County.

7.3. Charter Customer Default and Commission and County Remedies. The occurrence of any or more of the following matters shall constitute a default by a Charter Customer under this Agreement: failure by a Charter Customer to observe and perform any covenant, condition, or agreement on its part to be observed or performed hereunder and the continuation of the same for thirty (30) days after the Charter Customer's receipt of written notice thereof from either the County or the Commission (which notice shall be provided to all parties to this Agreement); provided, however, if such matter cannot with due diligence be remedied by the Charter Customer within such thirty (30) day period, and the Charter Customer shall have diligently prosecuted the remedying of such failure within such thirty (30) days, such period shall be extended by such additional time period as may be reasonably required by the Charter Customer to cure or correct such matter.

If a Charter Customer defaults under this Agreement, the remedies of the County or the Commission, as affected, shall be limited to an action in equity against the Charter Customer to enforce or compel performance of this Agreement and actions for mandamus and specific performances of the Charter Customer's obligations to the extent allowed by law. Election of any permitted remedy shall not be a waiver of any other permitted remedy, but each of the other parties to this Agreement agree that it will not seek, and does not have the right to seek, a judgment or to recover a judgment for monetary damages against the Charter Customer.

7.4. Force Majeure. In case by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligation under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States, of the State of Illinois, or of any civil or military authority, insurrections, riots, terrorism, acts of terror, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Commission or of any Charter Customer to deliver Lake Water hereunder, or of any Charter Customer to receive Lake Water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any "Force Majeure" shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty. The Task Force shall make a recommendation to the Commission, which shall determine if force majeure which renders any of the parties unable to perform under this Agreement shall relieve a Charter Customer of its obligations to make payments to the Commission that may be required under Section 5.

ARTICLE EIGHT

MISCELLANEOUS

8.1. Effective Date and Term. The County and the Commission shall authorize and execute this Agreement and offer it to the Charter Customers. Each Charter Customer shall have until November 1, 2002, to authorize the execution of and execute a counterpart of this Agreement as acceptance hereof and to file same with the Clerk of the Commission. This Agreement will become effective on the date upon which the first Charter Customer shall have executed and filed a counterpart hereof (the "Effective Date"). If effective as hereinabove provided, this Agreement shall continue in full force and effect (a) for a period of forty (40) years after the Effective Date or (b) until the termination of the Commission, whichever is earlier. The County, the Commission, and the Charter Customers agree to begin consideration of whether an extension of this Agreement is necessary not later than three (3) years prior to the end of the term of this Agreement.

8.2. Assignment. Neither the County, nor the Commission, nor any Charter Customer may assign, convey, or transfer this Agreement, or any part hereof, without prior written consent of the other parties to this Agreement. This Agreement shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties hereto.

8.3. Entire Agreement. This Agreement represents the entire agreement between the County, the Commission, and the Charter Customers that execute this Agreement with respect to the obligations and transactions to be performed hereunder, and supersedes all prior negotiations, proposals, term sheets, representations, or agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument signed by the County, the Commission, and each of the Charter Customers that executes this Agreement. Nothing in this Agreement shall supersede, modify, terminate, or alter in any way the terms and provisions of the Water Purchase and Sale Contract, which shall remain in full force and effect.

8.4. Notices. All notices or communications provided for herein shall be in writing and shall be delivered to the County, the Commission, or the Charter Customers affected either in person or by United States mail, via registered mail, return receipt requested, postage prepaid, addressed to the principal office thereof.

Any action hereunder to be taken by the County, the Commission, or any Charter Customer may be evidenced by copy of official proceedings (including pertinent minutes, motions, resolutions, or ordinances) duly certified by the Clerk of the County, the Commission, or such Charter Customer.

8.5. No Waiver. No course of dealing or failure of the County, the Commission, or any Charter Customer to enforce strictly any term, right, or condition of this Agreement shall be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Agreement shall operate as a waiver of any other term, right, or condition.

8.6. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish, or impose any legal duty to any third party.

8.7. Limitation on Commission's Financial Commitment. Notwithstanding any other provision of this Agreement, at no time during the term of this Agreement shall the Commission's total financial commitment under this Agreement exceed ten million dollars (\$10,000,000). No Charter Customer shall be required to take any action under this Agreement, including, but not limited to, matters relating to the Task Force, after the Commission has made a total financial commitment of ten million dollars (\$10,000,000).

8.8. Governing Law. This Agreement shall be governed by and construed exclusively under the applicable laws of the State of Illinois, without regard to conflicts of law principles.

8.9. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one or more of the parties hereto so long as each of the parties hereto has signed one or more of such counterparts.

IN WITNESS WHEREOF, the parties hereto have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be hereto affixed by their duly authorized officers, all on the date set opposite their respective corporate names.

DUPAGE WATER COMMISSION

By: _____

Chairman

Date: _____

10/10/02

[SEAL]

Attest: _____

By: _____

Clerk

COUNTY OF DUPAGE, ILLINOIS

By: _____

Chairman

Date: _____

10/11/02

[SEAL]

Attest: _____

By: _____

[~~CITY~~/VILLAGE] OF Downers Grove, ILLINOIS

By: Brian Krajewski

[~~Mayor~~/President]

Date: October 1, 2002

[SEAL]

Attest:

By: Amy L. Ann

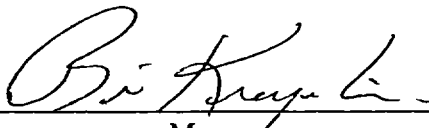
[~~City~~Village] Clerk

RESOLUTION NO. 2003-31

**A RESOLUTION AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL
AGREEMENT BETWEEN THE VILLAGE OF DOWNERS GROVE
AND THE DUPAGE WATER COMMISSION**

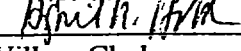
BE IT RESOLVED by the Village Council of the Village of Downers Grove, DuPage County, Illinois, as follows:

1. That the form and substance of a certain Intergovernmental Agreement (the "Agreement"), between the Village of Downers Grove (the "Village") and the DuPage Water Commission (the "Commission"), for implementation of water service to the Downers Grove "Service Area", as set forth in the form of the Agreement submitted to this meeting with the recommendation of the Village Manager, is hereby approved.
2. That the Village Manager and Village Clerk are hereby respectively authorized and directed for and on behalf of the Village to execute, attest, seal and deliver the Agreement, substantially in the form approved in the foregoing paragraph of this Resolution, together with such changes as the Manager shall deem necessary.
3. That the proper officials, agents and employees of the Village are hereby authorized and directed to take such further action as they may deem necessary or appropriate to perform all obligations and commitments of the Village in accordance with the provisions of the Agreement.
4. That all resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.
5. That this Resolution shall be in full force and effect from and after its passage as provided by law.



Mayor

Passed: April 15, 2003

Attest: 

Village Clerk

1\wp8\res.03\H2O-Service-contam

INTERGOVERNMENTAL AGREEMENT CONCERNING THE
IMPLEMENTATION OF WATER SERVICE TO THE
DOWNERS GROVE SERVICE AREA IN DuPAGE COUNTY

THIS AGREEMENT, made and entered into as of this 7th day of MAY, 2003 ("Effective Date"), by and between the DuPAGE WATER COMMISSION, a county water commission created and existing under the laws of the State of Illinois (the "Commission"), and the VILLAGE OF DOWNERS GROVE, a municipal corporation created and existing under the laws of the State of Illinois (the "Charter Customer"),

WITNESSETH:

WHEREAS, the Commission was formed and exists pursuant to the Water Commission Act of 1985, 70 ILCS 3720/1 *et seq.*, and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.*, for the purpose of securing an adequate source and supply of water for its customers; and

WHEREAS, the Commission operates a water system supplying a number of municipalities and other customers in DuPage County with water drawn from Lake Michigan; and

WHEREAS, the Charter Customer owns and operates a water distribution system (the "Charter Customer Water System"), which system is supplied with water by the Commission pursuant to the terms of that certain Water Purchase and Sale Contract dated as of June 11, 1986, with the Commission (the "Charter Customer Contract"); and

WHEREAS, close to fifty percent (50%) of the wells sampled in the area depicted on the map attached hereto and by this reference incorporated herein and made a part hereof as Exhibit A (the "Service Area") have levels of Trichloroethylene ("TCE") that exceed the maximum contaminant level for that regulated chemical as determined by

the National Primary Drinking Water Regulations, 40 C.F.R. § 141.1 *et seq.*, of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and/or the regulations related to the Illinois Pollution Control Board in 35 Ill. Admin. Code 620.105 *et seq.*; and

WHEREAS, the construction of certain improvements to the Charter Customer Water System will enable the Charter Customer to serve properties within the Service Area that currently cannot be served by the existing Charter Customer Water System (the "Improvements"); and

WHEREAS, to carry out their duties and responsibilities, and desiring to create a method of providing an adequate supply of Lake Michigan water to areas of DuPage County affected by contaminated well water, the Commission, the County of DuPage (the "County"), and the Charter Customer entered into an Intergovernmental Agreement for the Provision of Lake Michigan Water to Areas of DuPage County Affected By Contamination, effective as of October 11, 2002, and attached hereto and by this reference incorporated herein and made a part hereof as Exhibit B (the "Enabling Agreement"); and

WHEREAS, the Commission, the County, and the Charter Customer have jointly determined that a significant life, safety, and health risk related to human consumption of water is likely to be posed in the Service Area in the future and, thus, have jointly determined that the Service Area should be, and is hereby, designated as a "Primary Service Area" pursuant to the Enabling Agreement; and

WHEREAS, it is in the best interests of the Commission and the Charter Customer to coordinate and implement the supply of Lake Michigan water to the Service Area in accordance with the Enabling Agreement; and

WHEREAS, the Commission and the Charter Customer desire to set forth their understanding regarding such coordination and implementation in this Agreement; and

WHEREAS, the matters set forth in this Agreement will serve the public interest and assure that the significant public health and safety threat posed by the contaminated well water supply in the Service Area is minimized to the greatest extent possible; and

WHEREAS, pursuant to Section 10 of Article VII of the Illinois Constitution of 1970, the provisions of the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*, and other applicable authority, the Commission and the Charter Customer are authorized to enter into this Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the Commission and the Charter Customer hereby agree as follows:

SECTION 1. PREAMBLES

The foregoing recitals are by this reference incorporated herein and made a part hereof as if fully set forth herein.

SECTION 2. CONSTRUCTION OF IMPROVEMENTS; EXTENSION OF SERVICE

A. Description of the Improvements. For purposes of this Agreement, the "Improvements" shall include the construction of approximately 3,000 linear feet of 8 inch water main and approximately 1,200 linear feet of 12 inch water main with all necessary appurtenances to serve those portions of the Service Area for which no Existing Mains (as defined in the Enabling Agreement) of the Charter Customer exist and, in those portions of the Service Area for which Existing Mains of the Charter

Customer do exist, the necessary number of B-boxes and all necessary appurtenances to serve those Customers (as defined in the Enabling Agreement).

B. Design of the Improvements. The Charter Customer shall be the contracting party with the design engineer and shall administer the design contract for the benefit of both the County and the Charter Customer. The Charter Customer shall keep the County advised as to the progress of the design work.

C. Condition Precedent to Construction. The Charter Customer shall begin construction upon the adoption by the County of an enforceable ordinance requiring each Potential Customer (as defined in the Enabling Agreement) within the Service Area to connect to a public water supply (i) within 210 days following the adoption of the ordinance or (ii) within 90 days following the installation of the Improvements necessary to serve that Potential Customer, whichever is later (the "Condition Precedent to Service"). If the Condition Precedent to Service fails to occur, then, notwithstanding any requirement of the Enabling Agreement to the contrary, the Charter Customer shall have no obligation under this Agreement or the Enabling Agreement to extend water service to the Service Area. Notwithstanding the foregoing, the Charter Customer hereby reserves the right to waive satisfaction of the Condition Precedent to Service at its sole discretion.

D. Construction and Acceptance of the Improvements. Subject to satisfaction or waiver of the Condition Precedent to Service, the Charter Customer shall solicit bids or otherwise enter into agreement(s) for the construction of the Improvements. The Charter Customer agrees to award and administer all contracts for the project in the best interest of both the County and the Charter Customer and to keep advised County officials regarding the progress of the work and any problems

encountered or changes recommended. The Charter Customer shall enter into a construction contract(s) with the selected contractor(s), and shall administer such construction contract(s) in conformance with this Agreement. Any change order, as well as final acceptance and approval of the completed Improvements, shall be subject to the final approval of the Charter Customer. The Charter Customer shall not be required to approve or accept any portion of the Improvements until all portions of the Improvements, including all punch list items, have been fully and properly completed.

E. Cost of Design and Construction. Subject to satisfaction or waiver of the Condition Precedent to Service, the Improvements shall be designed and constructed at the sole cost of the Charter Customer. The Commission shall loan the Charter Customer all or a portion of the funds needed for the design and construction of the Improvements in accordance with Section 3 of this Agreement.

F. Extension of Service.

1. If Existing Mains can be used to provide service to any Customer in the Service Area, and subject to satisfaction or waiver of the Condition Precedent to Service, the Charter Customer shall a) within ninety (90) days after a Customer decides to receive water service from the Charter Customer through an Existing Main, enter into any necessary water service agreement and/or water loan agreement with that Customer; and b) within one hundred twenty (120) days after that Customer and the Charter Customer enter into the necessary water service agreement and/or water loan agreement, begin to extend and offer service through the Existing Mains to the property line (B-box) of that Customer.

2. In those portions of the Service Area for which no Existing Mains of the Charter Customer exist, the Charter Customer shall complete construction of the New Mains (as defined in the Enabling Agreement) within two hundred seventy (270) days after satisfaction or waiver of the Condition Precedent to Service. Thereafter, within ninety (90) days after a Customer has entered into any necessary water service agreement and/or water loan agreement for water service by the Charter Customer through a New Main, the Charter Customer shall begin to extend and offer service to that Customer's property line (B-box).

SECTION 3. COMMISSION FINANCING

A. Service Costs and Retail Customer Base. Service Costs (as defined in the Enabling Agreement) for the supply of Lake Michigan water to the Service Area are hereby established in the amount of \$4,788,000, which Service Costs are detailed in Exhibit C attached hereto and by this reference incorporated herein and made a part hereof. The number of Potential Customers (as defined in the Enabling Agreement) in the Service Area is hereby established at 800.

B. Loan. The Commission shall, after the execution and delivery of this Agreement, loan to the Charter Customer an amount not to exceed \$4,788,000 (the "Commitment") in the form of a revolving line of credit in order to provide funds to finance in whole or in part the Service Costs (the "Loan"). Draws on the Loan shall be limited as set forth in Section 3.E of this Agreement.

C. Loan Repayment.

1. The Charter Customer shall repay the principal balance of the Loan in 13 annual installments, commencing in 2010 on the 15th day of the month in which the Charter Customer made its first draw on the Loan (an "Annual Payment Date"), and continuing in successive annual installments on each Annual Payment Date in each year thereafter to and including the 2022 Annual Payment Date, with the final payment of any principal, if not sooner paid, on the 2023 Annual Payment Date. Each of the 13 annual installments of principal on the Loan shall be determined as of the last day of the month preceding the Annual Payment Date in any given year during the term of the Loan (a "Determination Date") and shall be determined by dividing the unpaid principal balance of the Loan as of the applicable Determination Date by the number of annual installments of principal remaining to be paid during the term of the Loan.
2. Interest on the unpaid principal balance of the Loan, at the rate of two percent (2%) per annum, calculated on the basis of a calendar year consisting of 360 days of twelve 30-day months, shall be paid commencing on the 2004 Annual Payment Date, and continuing on the Annual Payment Date each year thereafter until the principal balance of the Loan has been paid in full.
3. Notwithstanding the annual payment requirements of Sections 3.C.1 and 3.C.2 of this Agreement, however, in the event the

number of Customers in the Service Area is less than the number of Potential Customers in the Service Area, determined as of the Determination Date in any given year during the term of the Loan, then the Charter Customer shall only be required to pay to the Commission the total amount of interest and principal that would otherwise be due on the Loan for that year multiplied by the number of Customers in the Service Area divided by the number of Potential Customers in the Service Area.

4. If, at maturity, there remains any unpaid principal balance or interest on the Loan, the Commission shall extend the terms of the Loan for a commercially reasonable period provided the Charter Customer is not in default under this Agreement or the Enabling Agreement.

D. Tender of Loan Payments. Payments of principal and interest shall be made in lawful money of the United States of America in federal or other immediately available funds.

E. Procedure for Borrowing. The Charter Customer may draw on the Loan no more than once per month, on the 15th day of the month, provided that the Charter Customer shall give the Commission irrevocable notice (which notice must be received by the Commission prior to 10:00 a.m., local time, 15 days prior to the requested borrowing date), specifying the amount to be borrowed and the requested borrowing date. Each borrowing pursuant to this Agreement shall be in an aggregate principal amount of the lesser of (i) \$10,000 or a whole multiple thereof and (ii) the Available Commitment. For purposes of this Section 3.E, the Available Commitment at a

particular time is an amount equal to the difference between the Commitment and the aggregate principal balance of the Loan then outstanding.

F. Optional Prepayments. Subject to the limitations of this Section 3.F, the Charter Customer may, no more frequently than once in any given year, prepay, in whole or in part, the Loan, without premium or penalty, upon at least one business day's irrevocable notice to the Commission, specifying the date and amount of prepayment. The amount of any such optional prepayment shall be in increments of \$50,000. If such notice is given, the Charter Customer shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. The proceeds of any such prepayment shall be applied by the Commission first, to the payment of accrued and unpaid interest, if any, on the Loan and second, to the payment of the unpaid principal balance of the Loan. The Charter Customer shall not be entitled to, nor receive any credit for, interest on any such prepayment.

G. Mandatory Prepayments. Except for the Illinois Environmental Protection Agency grant previously awarded to the Charter Customer in the amount of \$711,948.00, the proceeds of which will be used by the Charter Customer to pay direct costs incurred in connection with the design and construction of the Improvements, the Charter Customer shall have, and hereby accepts, the obligation to prepay the Loan, in whole or in part, on any date within 60 days after the receipt by the Charter Customer of any other grant or any settlement funds from any source to the extent such grant or settlement funds are attributable to the Service Costs identified in Exhibit C attached hereto. The proceeds of any such prepayment shall be applied by the Commission first, to the payment of accrued and unpaid interest, if any, on the Loan and second, to the

payment of the unpaid principal balance of the Loan. The Charter Customer shall not be entitled to, nor receive any credit for, interest on any such prepayment.

H. Application of Loan Proceeds. The proceeds of the Loan shall be devoted to and used with due diligence for the purpose of paying the Service Costs identified in Exhibit C attached hereto in connection with the supply of Lake Michigan water to the Service Area; provided, however, that where an unexpended balance remains in any one or more of the various cost components of the Service Costs detailed in Exhibit C attached hereto, such balance may be transferred and expended, in whole or in part, to and for any other cost component of the Service Costs detailed in Exhibit C attached hereto.

SECTION 4. DEFAULTS AND REMEDIES

A. Commission Defaults. The occurrence of the following shall constitute a default by the Commission under this Agreement: The failure by the Commission to observe and/or perform any covenant, condition, and/or agreement on its part to be observed and/or performed under this Agreement, and the continuation of said failure for thirty (30) days after the Commission's receipt of written notice thereof from the Charter Customer. However, if said failure cannot be remedied by the Commission within said thirty (30) day period, and the Commission shall have diligently pursued resolution of the failure during said thirty (30) days, the period shall be extended by such additional time as may be reasonably required by the Commission to cure or correct said failure. In the event of a default by the Commission under this Agreement, the Charter Customer shall have the same remedies as are provided for, and only the remedies provided for, in the Enabling Agreement for a default by the Commission.

B. Charter Customer Defaults. The occurrence of the following shall constitute a default by the Charter Customer under this Agreement: The failure by the Charter Customer to observe and/or perform any covenant, condition, and/or agreement on its part to be observed and/or performed under this Agreement, and the continuation of said failure for thirty (30) days after the Charter Customer's receipt of written notice thereof from the Commission. However, if said failure cannot be remedied by the Charter Customer within said thirty (30) day period, and the Charter Customer shall have diligently pursued resolution of the failure during said thirty (30) days, the period shall be extended by such additional time as may be reasonably required by the Charter Customer to cure or correct said failure. In the event of a default by the Charter Customer under this Agreement, the Commission shall have the same remedies as are provided for, and only the remedies provided for, in the Enabling Agreement for a default by the Charter Customer.

C. Force Majeure. In case by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligation under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure, shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed in this Agreement shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States, of the State of Illinois, or of any civil or military authority, insurrections, riots, terrorism, acts of

terror, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Commission or of the Charter Customer to deliver Lake Michigan water, or of the Charter Customer to receive Lake Michigan water, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and the above requirement that any "Force Majeure" shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty. The Task Force (as defined in the Enabling Agreement) shall make a recommendation to the Commission, which shall determine if force majeure which renders any of the parties unable to perform under this Agreement shall relieve the Charter Customer of its obligations to make payments to the Commission that may be required under Section 3 of this Agreement.

SECTION 5. LEGAL RELATIONSHIPS AND REQUIREMENTS

A. Supplemental Agreement. This Agreement shall be deemed to supplement the Enabling Agreement in connection with the supply of Lake Michigan water to the Service Area; provided, however, that any requirement in the Enabling Agreement obligating the Charter Customer to extend water service to the Service Area, or take any other action in furtherance thereof, in the event the Condition Precedent to Service has failed to occur shall be, and they hereby are, waived. If there is any other conflict or inconsistency between the terms of this Agreement and the terms of the

Enabling Agreement, then the terms of this Agreement shall control. The Charter Customer shall at all times comply with all terms and conditions of the Enabling Agreement except as otherwise provided in this Agreement.

B. Term of Agreement. This Agreement shall continue in full force and effect from the Effective Date until the end of the term of the Enabling Agreement. The Commission and the Charter Customer agree to begin consideration of whether an extension of this Agreement is necessary not later than three (3) years prior to the end of the term of this Agreement.

C. Cooperation and Further Agreements. The Commission and the Charter Customer agree to meet and cooperate in good faith throughout the term of this Agreement to implement the letter and spirit of the provisions set forth in this Agreement. The Commission and the Charter Customer agree and acknowledge that further details regarding the Service Costs, and the financing of the Service Costs, in connection with the supply of Lake Michigan water to the Service Area may be subject to a future agreement.

D. Assignment. This Agreement may not be assigned by any party, in whole or in part, without the prior written consent of the other party.

E. Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed received by the addressee thereof when delivered in person on a business day at the address set forth below or on the third business day after being deposited in any main or branch United States post office, for delivery at the address set forth below by properly addressed, postage prepaid, certified or registered mail, return receipt requested.

Notices and communications to the Commission shall be addressed to, and delivered at, the following address:

DuPage Water Commission
600 East Butterfield Road
Elmhurst, Illinois 60126-4642
Attention: General Manager

Notices and communications to the Charter Customer shall be addressed to, and delivered at, the following address:

Village of Downers Grove
801 Burlington Avenue
Downers Grove, Illinois 60515-4776
Attention: Village Manager

The foregoing shall not be deemed to preclude the use of other non-oral means of notification or to invalidate any notice properly given by any such other non-oral means.

By notice complying with the requirements of this Section 5.E, the Commission and the Charter Customer each shall have the right to change the address or addressee or both for all future notices to it, but no notice of a change of address shall be effective until actually received.

F. Entire Agreement. This Agreement sets forth the entire agreement of the Commission and the Charter Customer with respect to the coordination and implementation of the supply of Lake Michigan water to the Service Area in accordance with the Enabling Agreement, and there are no other understandings or agreements, oral or written, by or between the Commission and the Charter Customer with respect thereto, nor was the making and execution of this Agreement induced by any representation, statement, warranty, agreement, or action other than those expressed or explicitly referenced in this Agreement.

G. No Waiver. No course of dealing or failure of the Commission or the Charter Customer to enforce strictly any term, right, or condition of this Agreement shall

be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Agreement shall operate as a waiver of any other term, right, or condition.

H. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish, or impose any legal duty to any third party.

I. Governing Law. This Agreement shall be governed by and construed exclusively under the applicable laws of the State of Illinois, without regard to conflicts of law principles.

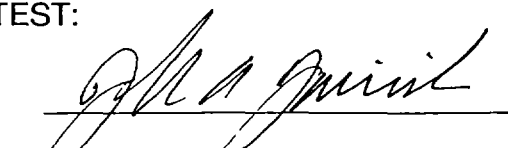
J. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one of the parties hereto so long as each of the parties hereto has signed one or more of such counterparts.

IN WITNESS WHEREOF, the Commission and the Charter Customer have caused this Agreement to be executed by their duly authorized officers, pursuant to proper authorization of their respective governing bodies, as of the date first stated above.

ATTEST:

By:

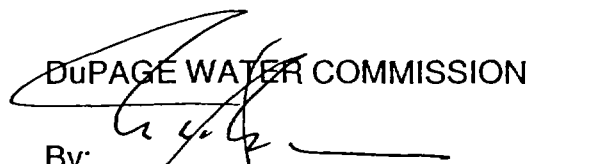
Its:


CLERK

DUPAGE WATER COMMISSION

By:

Its:


CHAIRMAN

ATTEST:

By: Don't H. Holt

Its: Village Clerk

CHI1 #194225 v5

VILLAGE OF DOWNERS GROVE

By: Edward J. Inf

Its: Village Manager

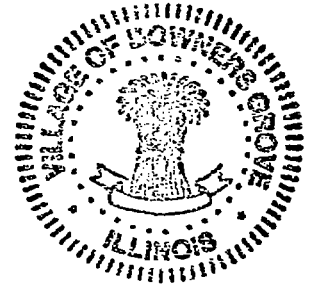


EXHIBIT A

UNINCORPORATED DOWNERS GROVE SERVICE BY DOWNERS GROVE



Key to Features

0 1000 2000 3000 Feet



Municipal Boundaries
Unincorporated

Downers Grove Water

4"
6"
8"
10"
12"

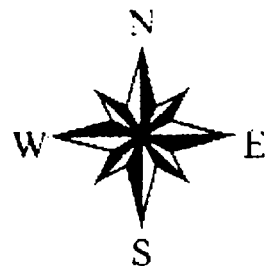


EXHIBIT B

INTERGOVERNMENTAL AGREEMENT

FOR THE PROVISION OF

LAKE MICHIGAN WATER TO

AREAS OF DUPAGE COUNTY

AFFECTED BY CONTAMINATION

THIS INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF LAKE MICHIGAN WATER TO AREAS OF DUPAGE COUNTY AFFECTED BY CONTAMINATION (this "Agreement") is made as of _____, 2002, by and between the DuPage Water Commission, Counties of DuPage, Cook, and Will, Illinois (the "Commission"), a commission and public corporation under Division 135 of Article 11 of the Illinois Municipal Code and the Water Commission Act of 1985; the County of DuPage, Illinois (the "County"), a body corporate and politic; and those units of local government of the State of Illinois hereafter defined as the "Charter Customers," as each executes this Agreement.

ARTICLE ONE

RECITALS

WHEREAS, the Commission is a public corporation created under the Water Commission Act of 1985, as amended, and Division 135 of Article 11 of the Illinois Municipal Code, and is authorized to enter into contracts and agreements relating to the purchase and supply of water pursuant to the laws of the State of Illinois; and

WHEREAS, the County is a unit of local government, organized and existing under and by virtue of the laws of the State of Illinois; and

WHEREAS, the Charter Customers are units of local government, organized and existing under and by virtue of the laws of the State of Illinois; and

WHEREAS, the Charter Customers have entered into a Contract with the Commission to purchase Lake Water sufficient to meet the water supply needs of the Charter Customers and others (the "Water Purchase and Sale Contract" as hereafter defined); and

WHEREAS, pursuant to Article VII, Section 10 of the Illinois Constitution of 1970, and the Intergovernmental Cooperation Act, as amended, the Commission, the County, and the Charter Customers are authorized to enter into this Agreement; and

WHEREAS, certain areas of the County have been affected by contaminated water, which poses a significant threat to the health and safety of numerous individuals; and

WHEREAS, subject to certain limitations, each of the Commission, the County, and the Charter Customers are authorized by law to engage in the retail sale of water to areas of the County affected by contaminated well water; and

WHEREAS, the Commission, the County, and the Charter Customers, desire to create a method of providing an adequate supply of Lake Michigan water to areas of the County affected by contamination;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE TWO

DEFINITIONS

2.1. "Agreement" means this Intergovernmental Agreement for the Provision of Lake Michigan Water to Areas of DuPage County Affected by Contamination.

2.2. "Charter Customer" means a unit of local government of the State of Illinois (not including the Commission) that is a party to the Water Purchase and Sale Contract, excluding, however, any such unit of local government whose rights and obligations under the Water Purchase and Sale Contract have been terminated.

2.3. "Commission" means the DuPage Water Commission, Counties of DuPage, Cook, and Will, Illinois.

2.4. "Connection Costs" has the meaning set forth in Section 5.2.

2.5. "County" means the County of DuPage, Illinois.

2.6. "Customer" means any person who purchases Lake Water from a Charter Customer pursuant to this Agreement solely for use by that person and not for redistribution or resale.

2.7. "Customer Costs" has the meaning set forth in Section 5.2.

2.8. "Effective Date" means the effective date of this Agreement, as defined in Section 8.1.

2.9. "Existing Main" means a water main, existing or under construction on the Effective Date of this Agreement, of a Charter Customer from which a Customer within a Service Area can receive service under the terms and conditions of this Agreement without the need for the Charter Customer to construct a New Main.

2.10. "Lake Water" means potable, filtered water drawn from Lake Michigan.

2.11. "MCL" means a maximum contaminant level as determined in accordance with Section 3.2.

2.12. "Market Rate" means the average cost of borrowing of the Commission.

2.13. "New Main" means a water main and related infrastructure, not existing or under construction on the Effective Date of this Agreement, constructed by a Charter Customer for the purpose of providing service to a Service Area under the terms and conditions of this Agreement. New Main shall not include a water main constructed by a Charter Customer exclusively for reasons other than providing service under the terms of this Agreement.

2.14. "Pathway Service Area" has the meaning set forth in Section 3.2.

2.15. "Potential Customer" means any Customer or any other person currently requiring water service on property located within a Service Area. For purposes of this definition, property currently requiring water service includes property for which a building permit has been issued.

2.16. "Primary Service Area" has the meaning set forth in Section 3.2.

2.17. "Professional Fees" has the meaning set forth in Section 5.2.

2.18. "Recapture Costs" has the meaning set forth in Section 5.2.

2.19. "Secondary Service Area" has the meaning set forth in Section 3.2.

2.20. "Service Area" means either a Primary Service Area, a Secondary Service Area, or a Pathway Service Area. The term Service Area will be used in provisions of this Agreement that are intended to apply to any type of Service Area, regardless of whether it is a Primary Service Area, a Secondary Service Area, or a Pathway Service Area. When a provision of this Agreement is intended to apply specifically to a Primary Service Area, specifically to a Secondary Service Area, or specifically to a Pathway Service Area, the appropriate term will be used.

2.21. "Service Costs" means Service Provision Costs, Recapture Costs, Connection Costs, Customer Costs, and Professional Fees.

2.22. "Service Provision Costs" has the meaning set forth in Section 5.2.

2.23. "Source Well" has the meaning set forth in Section 3.2.

2.24. "Task Force" means the Commission task force established for the purpose of advising the Commission on the implementation of this Agreement, or if no longer in existence, shall mean the Commission or any other committee or task force of the Commission so delegated.

2.25. "Water Allocation" means, with respect to a Charter Customer, such Charter Customer's allocation and allowable excess from time to time of Lake Water pursuant to the Level of Lake Michigan Act, as amended from time to time (See the State of Illinois Department of Transportation, Division of Water Resources Decision on 1989 Allocation Review, Order No. LMO 89-2 and subsequent orders of the State of Illinois Department of Transportation, Division of Water Resources, or the successor to its responsibilities, the State of Illinois Department of Natural Resources, Office of Water Resources); and such other amounts of Lake Water as such Charter Customer may lawfully take.

2.26. "Water Purchase and Sale Contract" means the water purchase and sale contract, dated June 11, 1986, between the Commission and the Charter Customers, as amended or supplemented from time to time.

ARTICLE THREE

AREAS TO BE SERVED

3.1. Provision of Lake Water to Service Areas. Charter Customers will provide, and Customers may receive, Lake Water in conformance with the terms and conditions described in this Agreement.

3.2. Service Areas. Service Areas shall be determined by the Commission, with the advice of the Task Force, as follows. If, as a result of testing conducted pursuant to Section 3.3, a well is located that exhibits a level of any regulated chemical that exceeds maximum contaminant level ("MCL") as determined by the National Primary Drinking Water Regulations, 40 C.F.R. § 141.1 *et seq.*, of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and/or the regulations related to the Illinois Pollution Control Board in 35 Ill. Admin. Code 620.105 *et seq.* (the "Source Well"), the Commission shall retain an engineer, with the advice of the Task Force, who shall conduct additional testing. If, upon completion of the additional testing, the engineer determines that:

a. over fifty percent (50%) of the sampled wells in an area emanating from the Source Well have levels of any regulated chemical that exceed MCL as determined by the National Primary Drinking Water Regulations, 40 C.F.R. § 141.1 *et seq.*, of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and/or the regulations related to the Illinois Pollution Control Board in 35 Ill. Admin. Code 620.105 *et seq.*, then that area shall be designated by the Commission as a "Primary Service Area."

b. in an area that the Commission determines to be in reasonable proximity to a Primary Service Area:

i. over fifty percent (50%) of the sampled wells contain detectable concentrations of the same regulated chemical as determined by the National Primary Drinking Water Regulations, 40 C.F.R. § 141.1 *et seq.*, of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and/or the regulations related to the Illinois Pollution Control Board in 35 Ill. Admin. Code 620.105 *et seq.*, that is found in the reasonably proximate Primary Service Area; or

ii. over fifty percent (50%) of the sampled wells have levels of any regulated chemical as determined by the National Primary Drinking Water Regulations, 40 C.F.R. § 141.1 *et seq.*, of the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*, and/or the regulations related to the Illinois Pollution Control Board in 35 Ill. Admin. Code 620.105 *et seq.*, which contain detectable concentrations but do not exceed MCL and which, after reviewing an engineer's report, the Commission determines are substantially likely to exceed MCL in the reasonably foreseeable future,

then that area shall be designated by the Commission as a "Secondary Service Area."

Notwithstanding the requirements of Section 3.2.a., the Commission may designate an area as a Primary Service Area if the engineer retained by the Commission determines that a significant life, safety, or health risk related to human consumption of water is posed in the area or is likely to be posed in the future. Upon designation by the Commission, service under the terms of this Agreement shall be offered

to all Primary Service Areas and Secondary Service Areas, as well as, in the case of service from New Mains, to the area along the pathway of the New Main that is not either a Primary Service Area or a Secondary Service Area ("Pathway Service Area"). The Commission has the authority to split a Service Area into one or more Service Areas if the Commission, with the advice of the Task Force, determines that it is more practical to provide service to a Service Area through the combination of one or more New Mains or Existing Mains. For each Service Area, an implementing agreement will be prepared and approved by the County, the Commission, and the Charter Customer that is to provide service to the Service Area. The implementing agreement for each Service Area will include: (a) financing terms prepared in accordance with Section 5 of this Agreement; (b) terms and conditions specific to the provision of service by the Charter Customer to the particular Service Area; and (c) a map of the Service Area, which shall be the definitive source regarding the boundaries of the Service Area and shall govern any disputes that arise concerning locations to be served in the Service Area. Without regard to any other provision of this Agreement, no party hereto shall be obligated to take any action pursuant to this Agreement until the County, the Commission, and the Charter Customer asked to provide Lake Water, have entered into an implementing agreement. The decision whether or not to enter into an implementing agreement shall be within the sole and absolute discretion of each party.

3.3. Testing for Contamination. The County will oversee the process of testing for contamination. Testing will be conducted by laboratories certified for chemical analysis of potable water by the Illinois Environmental Protection Agency Division of Laboratories.

3.4. Payment of Costs for Testing. The County will be responsible for paying or seeking reimbursement for the costs of testing for contamination.

3.5. Commission Reimbursement for Certain Contamination Testing Costs. To the extent that the County anticipates that it will:

- a. incur costs that are out of the ordinary or in excess of the County's current budget for contamination testing; or
- b. be unable to obtain reimbursement from other sources,

it may, prior to conducting testing, submit a request to the Commission for consideration of reimbursement of such costs from the Commission. This request will be reviewed by the Task Force, which shall make a recommendation to the Commission as to whether Commission reimbursement is appropriate. If the Commission approves reimbursement, the costs will be allocated by the Commission, whenever possible, to the cost of providing service to the Service Area in which testing was conducted.

ARTICLE FOUR

PROVISION OF SERVICE

4.1. Service from an Existing Main. If an Existing Main can be used to provide service to a Service Area, the Charter Customer that owns the Existing Main will make Lake Water available to the Service Area from the Existing Main, provided, however that if, in any Service Area, an intergovernmental agreement has been entered into pertaining to the Existing Main, then that intergovernmental agreement shall govern and shall determine which Charter Customer will make Lake Water available to the Service Area from the Existing Main.

4.2. Service from a New Main. If an Existing Main is not available to provide service to a Service Area, the closest adjacent Charter Customer, to the extent not prohibited by law or existing intergovernmental or boundary agreement, shall make Lake Water available through the construction of a New Main in order to provide Lake Water to the Service Area. If the closest adjacent Charter Customer is unable to make Lake Water available through the construction of a New Main, because the Charter Customer is prohibited from doing so by law or existing intergovernmental or boundary agreement, then another adjacent Charter Customer shall make Lake Water available through the construction of a New Main.

If:

- a. there is no Charter Customer adjacent to a Service Area; or
- b. all Charter Customers adjacent to a Service Area are unable to make Lake Water available through the construction of a New Main, because all Charter Customers adjacent to a Service Area are prohibited from doing so by law or existing intergovernmental or boundary agreement; or
- c. if the Charter Customers adjacent to a Service Areas are unable to agree to a method of making Lake Water available through the construction of a New Main,

then the Commission, with the advice of the Task Force, will determine the method by which Lake Water will be made available through the construction of a New Main.

4.3. Task Force Advisory Role. The Task Force shall advise the Commission regarding the provision of service under this Agreement, which shall include, but not be limited to, advising the Commission on the methods of determining costs of and financing for service described in Article 5 of this Agreement and advising the Commission on the terms of service described in Article 6 of this Agreement.

ARTICLE FIVE

COSTS OF AND FINANCING FOR SERVICE

5.1 Financing Process. After a Service Area is designated, Service Costs related to providing service shall be determined and a means of providing financing for service shall be made available as set forth below. The Task Force shall advise the Commission on the process of determining Service Costs and arranging financing for each Service Area.

5.2. Determination of Service Costs. The Task Force shall advise the Commission on Service Costs for each Service Area. The final determination of Service Costs for each Service Area shall be determined by the Commission. These Service Costs may vary based upon field contingencies related to each Service Area. The Service Costs shall consist of the following components:

- a. reasonable engineering, construction, and property acquisition costs incurred by the County, the Commission, or the Charter Customer related to providing service to a Service Area ("Service Provision Costs");

b. reimbursement of the Charter Customer for actual costs previously expended for construction of Existing Mains used to provide service to a Customer, as contained in the ordinances of the Charter Customer ("Recapture Costs");

c. reasonable connection costs and other fees that a Customer must pay in order to receive service from a Charter Customer, which the Task Force shall recommend and the Commission shall determine for each Customer of a Service Area ("Connection Costs");

d. reasonable costs incurred by each Customer in order that the Customer's property may receive service from a New Main or an Existing Main, which the Task Force shall recommend and the Commission shall determine for each Customer of a Service Area ("Customer Costs"); and

e. reasonable professional fees allocated to the Service Area as described in Section 5.3 ("Professional Fees") (Service Provision Costs, Recapture Costs, Connection Costs, Customer Costs, and Professional Fees are collectively referred to as "Service Costs").

If a portion of a New Main or an Existing Main is used to serve an area that is not a Service Area, then the Service Costs for the Service Area shall be reduced accordingly on a proportionate basis. Separate determinations of residential Service Costs and commercial and industrial Service Costs may be made for each Service Area.

5.3. Professional Fees. Professional Fees shall include reasonable legal fees, limited to those borne by the County, the Commission, and the Charter Customers, related to negotiating, executing, and preparing the Agreement, which shall be reimbursed by the Commission. Professional Fees shall also include: (a) public relations fees related to encouraging Potential Customers from a Service Area to receive service, as described in Section 6.6, and (b) contamination testing costs, as described in Section 3.5, for which the Task Force shall make a recommendation and the Commission shall make a final determination that they be:

- a. allocated over all Service Areas to which service is provided;
- b. allocated to a particular Service Area to which service is provided, if the Professional Fees directly relate to the provision of service to a particular Service Area;
- c. reimbursed by the Commission from a reserve established by the Commission; or
- d. neither allocated pursuant to Section 5.3.a. or Section 5.3.b. nor reimbursed pursuant to Section 5.3.c.

5.4. Special Service Areas. For each Service Area in which service shall be provided, the County will have the option of proposing and implementing a special service area. If the County chooses not to propose and implement a special service area, it shall give notice to the Charter Customer that is to provide service to the Service Area and the County and the Charter Customer that is to provide service to the Service Area will confer as to whether the implementation of a special service area is appropriate. If the County and the Charter Customer that is to provide service to the Service Area cannot agree as to whether implementation of a special service area is appropriate, the appropriateness of implementation of a special service area will be submitted to the Task Force, which shall make a

recommendation to the Commission, which shall determine whether a special service area will be pursued in the Service Area. The Commission will provide financing for Service Costs for each special service area that is created as described in this Section 5.4. on the same terms (i.e. interest rate and maturity date) as described hereafter in Section 5.5. The Service Costs for each special service area that is created as described in this Section 5.4 shall be determined as described above in Section 5.2, and shall also include reasonable costs incurred by the County related to the establishment and operation of the special service area, which costs shall be determined as described above in Section 5.2. The County and the Charter Customer that is to provide service to the Service Area will cooperate in billing and collecting any Service Costs payable as a result of each special service area that is created as described in this Section 5.4. A Charter Customer will have the option of proposing and implementing a special service area with the same rights, terms, and conditions that apply to the County under this Section 5.4.

5.5. Loans from Commission to Charter Customers. If:

- a. after the completion of the process described in Section 5.4, a special service area is not pursued; or
- b. the implementation of a special service area is rejected in a Service Area; or
- c. for any other reason, a special service area cannot be implemented in a Service Area,

then the Commission shall provide twenty (20) year loans to the Charter Customer that provides service to the Service Area at a rate of two percent (2%) per annum for the residential Service Costs related to the Service Area and at the Market Rate for the commercial and industrial Service Costs related to the Service Area. The Commission will provide funds to Charter Customers either through the Commission's cash on hand or via the issuance of the Commission's revenue bonds. Interest payments will be due annually during the period of the loan, beginning in year one. Principal payments of equal installments will be due annually, beginning six years after the loan is made. The Charter Customer will be required to pay the Commission at least the following amount annually: the total amount of interest and principal due that year multiplied by the number of Customers in the Service Area divided by the number of Potential Customers in the Service Area. If any Charter Customer debt remains after the twenty (20) year loan period concludes, the Commission shall extend the terms of the loan made to the Charter Customer for a commercially reasonable period, provided the Charter Customer is not in default.

5.6. Charter Customer Charges to Customers. A Charter Customer may charge each Customer no more than each Customer's proportionate share of Service Costs based on the number of Potential Customers in a Service Area, provided, however, that if, in a Service Area in which service is to be provided via a New Main, the implementation of a special service area is rejected, then the proportionate share of Service Costs that the Charter Customer may charge each Customer shall be no more than the following amount: the total amount of Service Costs for the Service Area divided by nine-tenths (9/10) of the number of Potential Customers in the Service Area (unless more than nine-tenths (9/10) of the number of Potential Customers in the Service Area are Customers, in which case a Charter Customer may charge each Customer no more than each Customer's proportionate share of Service Costs based on the number of Potential Customers in the Service Area). If at any time the number of Potential Customers in a Service Area exceeds the number of Potential Customers in the Service Area at the time proportionate shares are initially calculated, then the proportionate share of

each Customer in the Service Area shall be adjusted accordingly. A Charter Customer may, with Commission approval, adjust the charges for each Customer based on factors such as the water consumption of each Customer and whether the Customer is a residential or commercial or industrial Customer.

5.7. Loans from Charter Customers to Customers. Each Charter Customer receiving a loan from the Commission shall offer twenty (20) year loans to residential Customers at a rate of two percent (2%) per annum for each residential Customer's proportionate share of Service Costs, as determined in accordance with Section 5.6. Interest payments will be due annually during the period of the loan, beginning in year one. Principal payments of equal installments will be due annually beginning six years after the loan is made. Each Charter Customer shall offer twenty (20) year loans to commercial and industrial Customers at the Market Rate as of the date of the loan for each commercial or industrial Customer's proportionate share of Service Costs, as determined in accordance with Section 5.6. Interest payments will be due annually during the period of the loan, beginning in year one. Principal payments will be due annually beginning six years after the loan is made. If the proportionate share of each Customer in a Service Area is adjusted pursuant to Section 5.6, then the loan amounts and repayment amounts will be recalculated accordingly. The twenty (20) year loan term shall apply only to Customers who enter into loan agreements when loans are initially offered in a Service Area. Customers who enter into loan agreements after loans were initially offered in a Service Area shall have only the remaining number of years to repay the loan as Customers who entered into loan agreements when loans were initially offered. For example, if the loan is taken in year 1, the Customer shall have twenty (20) years to repay the loan; if the loan is taken in year 5, the Customer shall have fifteen (15) years to repay the loan. Furthermore, Customers who enter into loan agreements after loans were initially offered in a Service Area shall be responsible for interest payments as if they entered into a loan agreement when loans were initially offered. For example, if the loan is taken in year 1, the Customer shall begin paying interest in year 1 through the term of the loan; if the loan is taken in year 5, the Customer shall be responsible for paying interest for years 1-4, as well as paying interest from year 5 through the term of the loan. The form of the loan agreement offered by a Charter Customer to a Customer will be reviewed by the Commission prior to its use.

5.8. Potential Grant Programs. The Task Force shall advise the Commission as to the extent to which grants may be available (a) to assist in providing financing for the provision of service in each Service Area, and (b) to assist Customers from Service Areas who are unable to afford Customer Costs.

5.9. Grants to Customers. The County and the Charter Customer that provides service to a Service Area will cooperate in order to obtain and distribute grants to assist Customers who satisfy applicable grant criteria.

ARTICLE SIX

TERMS OF SERVICE

6.1. Lake Water to be Made Available as Soon as Practicable. A Charter Customer will make Lake Water available as soon as practicable from its existing Water Allocation to a Service Area.

6.2. Condition of Service to Secondary Service Areas. If service can only be provided to a Secondary Service Area through a New Main, then, as a condition of being eligible to receive service under the terms of this Agreement:

- a. a special service area, as described above in Section 5.4, must be implemented in the Secondary Service Area; or
- b. if the implementation of a special service area is rejected in a Secondary Service Area, or for any other reason a special service area cannot be implemented in a Secondary Service Area, at least seventy percent (70%) of property owners within the Secondary Service Area must sign a pre-annexation agreement or a water service or water loan agreement with the Charter Customer providing service to the Secondary Service Area.

If these conditions are not met and service under the terms of this Agreement is not provided in a Secondary Service Area, the County and the Charter Customer that was to provide service to the Secondary Service Area shall be reimbursed by the Commission for reasonable costs related to attempting to provide service to the Secondary Service Area, such as, but not limited to, engineering costs and costs related to preparation of establishment of a special service area.

6.3. Service from an Existing Main. Pursuant to the other terms of this Agreement, Charter Customers shall offer access to an Existing Main:

- a. immediately after a Customer from a Service Area signs a pre-annexation agreement with the Charter Customer, if such an agreement is required by the Charter Customer as a condition of receiving Lake Water; or
- b. within ninety (90) days of the execution of this Agreement, if a pre-annexation agreement is not required by the Charter Customer.

6.4. Service from a New Main. Within thirty (30) days of the date that a Service Area becomes eligible for service from a New Main, or by the date determined by the Commission if the Charter Customer submits, and the Commission approves, a written request to the Commission for an extension of the thirty (30) day period, the Charter Customer serving the Service Area shall provide a schedule to the County that shall include necessary engineering and construction considerations, including projected completion dates, related to construction and installation of the New Main. If the County determines that the project completion date for the construction of the New Main is unacceptable because (a) of life, safety, and health concerns of the County related to providing Lake Water to the Service Area, and (b) the County has the ability to provide service to the Service Area more rapidly, then the County may submit a request to the Task Force to expedite the construction of the New Main. The Charter Customer may submit evidence to the Task Force and the Commission regarding the reasonableness of the Charter Customer's proposed project completion date. The Task Force shall make a recommendation to the Commission regarding whether the County's request should be granted. The Commission shall review the Task Force's recommendation and shall determine whether to approve the County's request. If the Commission approves the County's request, the New Main will be built to the specifications of the Charter Customer providing Lake Water to the Service Area. Upon completion, the New Main will be dedicated by the County to the Charter Customer providing service to the Service Area. The Commission will reimburse the County for its share of Service Costs related to providing

service to the Service Area in the same manner as the Charter Customer is reimbursed. The Commission will charge these costs to the Charter Customer providing service to the Service Area. In order to repay these costs, the Charter Customer will be entitled to a loan from the Commission and the Customers in the Service Area will be entitled to a loan from the Charter Customer under the terms described in Article Five of this Agreement. To the extent not expressly provided for herein, the County and each Charter Customer do not waive any legal rights to act independently from this Agreement in order to construct New Mains or to take any other actions necessary to provide water service.

6.5. Notice to Potential Customers from Service Areas. After a method of financing service is determined for a Service Area, the Charter Customer providing service to the Service Area shall give notice of the Service Costs to Potential Customers from the Service Area. Potential Customers offered Lake Water from an Existing Main shall have a period of no less than ninety (90) days from the date that Service Cost information is sent to them for initial consideration of whether they wish to receive service from the Charter Customer. Potential Customers offered Lake Water from a New Main shall have a period of no less than six months from the date that Service Cost information is sent to them for initial consideration of whether they wish to receive service from the Charter Customer. Service Cost information shall be determined as described above in Sections 5.2 and 5.3.

6.6. Cooperation Concerning Customers. The County, the Commission, and the Charter Customers shall cooperate in efforts to maximize the number of Customers from Service Areas who receive Lake Water. Such cooperation shall include, but not be limited to: (a) public relations activities and other forms of publicity detailing the benefits of receiving Lake Water; (b) establishing a public record that an area is contaminated and notifying property owners of the contamination; and (c) such other activities upon which the County, the Commission, and the Charter Customers agree.

6.7. Cooperation Concerning Property Acquisition. The County, the Commission, and the Charter Customers shall cooperate in acquiring property rights necessary to provide service under the terms of this Agreement.

6.8. Limitations on Conditions and on Annexation. A Charter Customer may require that each Customer enter into a pre-annexation agreement or, where annexation is not a condition of service, a water service or water loan agreement with the Charter Customer as a pre-condition of receiving Lake Water from the Charter Customer under the terms of this Agreement. Any such agreement shall not require annexation earlier than ten years from the end of the respective initial consideration periods described in Section 6.5. During the period before annexation, a Charter Customer will not require implementation of any conditions on the provision of Lake Water to a Customer, except those set forth in a pre-annexation agreement that are allowed by generally applicable laws, ordinances, rules, and regulations related to the receipt and use of Lake Water (such as sprinkling limitations and sanitary plumbing requirements). Except as provided herein, Charter Customers do not waive any annexation rights to which they may be entitled under State law or under pre-existing annexation agreements or pre-annexation agreements.

6.9. Right to Discontinue Service. To the extent authorized by law, Charter Customers shall have the right to discontinue service to any Customer of a Service Area who receives Lake Water from the Charter Customer if the Customer of the Service Area:

- a. fails to meet regular payment obligations for Lake Water;

- b. fails to pay appropriate costs related to the costs of receiving service, including the Customer's share of Service Costs; or
- c. breaches a pre-annexation agreement with the Charter Customer.

Furthermore, to the extent authorized by law, a lien will attach to the property of the Customer of the Service Area in the amount that the Customer is in default to the Charter Customer providing Lake Water.

6.10. Ability to Charge Differential Rate. A Charter Customer may provide Lake Water to Customers of a Service Area at a differential rate than to a Charter Customer's own municipal customers so long as the rate is not unreasonably discriminatory as described in Illinois common law.

ARTICLE SEVEN

DEFAULTS AND REMEDIES

7.1. Commission Default and County and Charter Customer Remedies. The occurrence of the following shall constitute a default by the Commission under this Agreement: failure by the Commission to observe and perform any covenant, condition, or agreement on its part to be observed or performed hereunder and the continuation of the same for thirty (30) days after the Commission's receipt of written notice thereof from either the County or any Charter Customer (which notice shall be provided to all parties to this Agreement); provided, however, if such matter cannot with due diligence be remedied by the Commission within such thirty (30) day period, and the Commission shall have diligently prosecuted the remedying of such failure within such thirty (30) days, such period shall be extended by such additional time period as may be reasonably required by the Commission to cure or correct such matter.

If the Commission defaults under this Agreement, the remedies of a Charter Customer or the County, as affected, shall be limited to an action in equity against the Commission to enforce or compel performance of this Agreement and actions for mandamus and specific performances of the Commission's obligations to the extent allowed by law. Election of any permitted remedy shall not be a waiver of any other permitted remedy, but each of the other parties to this Agreement agree that it will not seek, and does not have the right to seek, a judgment or to recover a judgment for monetary damages against the Commission.

7.2. County Default and Commission and Charter Customer Remedies. The occurrence of the following shall constitute a default by the County under this Agreement: failure by the County to observe and perform any covenant, condition, or agreement on its part to be observed or performed hereunder and the continuation of the same for thirty (30) days after the County's receipt of written notice thereof from either the Commission or any Charter Customer (which notice shall be provided to all parties to this Agreement); provided, however, if such matter cannot with due diligence be remedied by the County within such thirty (30) day period, and the County shall have diligently prosecuted the remedying of such failure within such thirty (30) days, such period shall be extended by such additional time period as may be reasonably required by the County to cure or correct such matter.

If the County defaults under this Agreement, the remedies of a Charter Customer or the Commission, as affected, shall be limited to an action in equity against the County to enforce or compel performance of this Agreement and actions for mandamus and specific performances of the County's

obligations to the extent allowed by law. Election of any permitted remedy shall not be a waiver of any other permitted remedy, but each of the other parties to this Agreement agree that it will not seek, and does not have the right to seek, a judgment or to recover a judgment for monetary damages against the County.

7.3. Charter Customer Default and Commission and County Remedies. The occurrence of any or more of the following matters shall constitute a default by a Charter Customer under this Agreement: failure by a Charter Customer to observe and perform any covenant, condition, or agreement on its part to be observed or performed hereunder and the continuation of the same for thirty (30) days after the Charter Customer's receipt of written notice thereof from either the County or the Commission (which notice shall be provided to all parties to this Agreement); provided, however, if such matter cannot with due diligence be remedied by the Charter Customer within such thirty (30) day period, and the Charter Customer shall have diligently prosecuted the remedying of such failure within such thirty (30) days, such period shall be extended by such additional time period as may be reasonably required by the Charter Customer to cure or correct such matter.

If a Charter Customer defaults under this Agreement, the remedies of the County or the Commission, as affected, shall be limited to an action in equity against the Charter Customer to enforce or compel performance of this Agreement and actions for mandamus and specific performances of the Charter Customer's obligations to the extent allowed by law. Election of any permitted remedy shall not be a waiver of any other permitted remedy, but each of the other parties to this Agreement agree that it will not seek, and does not have the right to seek, a judgment or to recover a judgment for monetary damages against the Charter Customer.

7.4. Force Majeure. In case by reason of force majeure any party hereto shall be rendered unable wholly or in part to carry out its obligation under this Agreement, then if such party shall give notice and full particulars of such force majeure in writing to the other parties within a reasonable time after occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such force majeure shall be suspended during the continuance of the inability then claimed, but for no longer period, and any such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "force majeure" as employed herein shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, orders of any kind of the Government of the United States, of the State of Illinois, or of any civil or military authority, insurrections, riots, terrorism, acts of terror, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, canals, or tunnels, partial or entire failure of water supply, and inability on the part of the Commission or of any Charter Customer to deliver Lake Water hereunder, or of any Charter Customer to receive Lake Water hereunder, on account of any other causes not reasonably within the control of the party claiming such inability. The settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty and that the above requirement that any "Force Majeure" shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable to it in the judgment of the party having the difficulty. The Task Force shall make a recommendation to the Commission, which shall determine if force majeure which renders any of the parties unable to perform under this Agreement shall relieve a Charter Customer of its obligations to make payments to the Commission that may be required under Section 5.

ARTICLE EIGHT

MISCELLANEOUS

8.1. Effective Date and Term. The County and the Commission shall authorize and execute this Agreement and offer it to the Charter Customers. Each Charter Customer shall have until November 1, 2002, to authorize the execution of and execute a counterpart of this Agreement as acceptance hereof and to file same with the Clerk of the Commission. This Agreement will become effective on the date upon which the first Charter Customer shall have executed and filed a counterpart hereof (the "Effective Date"). If effective as hereinabove provided, this Agreement shall continue in full force and effect (a) for a period of forty (40) years after the Effective Date or (b) until the termination of the Commission, whichever is earlier. The County, the Commission, and the Charter Customers agree to begin consideration of whether an extension of this Agreement is necessary not later than three (3) years prior to the end of the term of this Agreement.

8.2. Assignment. Neither the County, nor the Commission, nor any Charter Customer may assign, convey, or transfer this Agreement, or any part hereof, without prior written consent of the other parties to this Agreement. This Agreement shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties hereto.

8.3. Entire Agreement. This Agreement represents the entire agreement between the County, the Commission, and the Charter Customers that execute this Agreement with respect to the obligations and transactions to be performed hereunder, and supersedes all prior negotiations, proposals, term sheets, representations, or agreements, whether written or oral. This Agreement may be amended or modified only by a written instrument signed by the County, the Commission, and each of the Charter Customers that executes this Agreement. Nothing in this Agreement shall supersede, modify, terminate, or alter in any way the terms and provisions of the Water Purchase and Sale Contract, which shall remain in full force and effect.

8.4. Notices. All notices or communications provided for herein shall be in writing and shall be delivered to the County, the Commission, or the Charter Customers affected either in person or by United States mail, via registered mail, return receipt requested, postage prepaid, addressed to the principal office thereof.

Any action hereunder to be taken by the County, the Commission, or any Charter Customer may be evidenced by copy of official proceedings (including pertinent minutes, motions, resolutions, or ordinances) duly certified by the Clerk of the County, the Commission, or such Charter Customer.

8.5. No Waiver. No course of dealing or failure of the County, the Commission, or any Charter Customer to enforce strictly any term, right, or condition of this Agreement shall be construed as a waiver of such term, right, or condition. No express waiver of any term, right, or condition of this Agreement shall operate as a waiver of any other term, right, or condition.

8.6. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person or entity who is not a party to this Agreement, or to acknowledge, establish, or impose any legal duty to any third party.

8.7. Limitation on Commission's Financial Commitment. Notwithstanding any other provision of this Agreement, at no time during the term of this Agreement shall the Commission's total financial commitment under this Agreement exceed ten million dollars (\$10,000,000). No Charter Customer shall be required to take any action under this Agreement, including, but not limited to, matters relating to the Task Force, after the Commission has made a total financial commitment of ten million dollars (\$10,000,000).

8.8. Governing Law. This Agreement shall be governed by and construed exclusively under the applicable laws of the State of Illinois, without regard to conflicts of law principles.

8.9. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. Any such counterpart may be signed by one or more of the parties hereto so long as each of the parties hereto has signed one or more of such counterparts.

IN WITNESS WHEREOF, the parties hereto have caused their respective corporate names to be subscribed hereto and their respective corporate seals to be hereto affixed by their duly authorized officers, all on the date set opposite their respective corporate names.

DUPAGE WATER COMMISSION

By: _____

Chairman

Date: _____

10/10/02

[SEAL]

Attest: _____

By: _____

Clerk

COUNTY OF DUPAGE, ILLINOIS

By: _____

Chairman

Date: _____

10/11/02

[SEAL]

Attest: _____

By: _____

[~~CITY~~/VILLAGE] OF Downers Grove, ILLINOIS

By: Brian Krajewski
[Mayor/~~President~~]

Date: October 1, 2002

[SEAL]

Attest:

By: April H. [Signature]
[~~City~~/Village] Clerk

EXHIBIT C

Downers Grove, Illinois
TCE Impacted Area
Estimate of Cost for Connections

Estimated units		800
<hr/>		
Local share of North Belmont Park (Excludes IEPA Grant)		\$ 300,000
Fees for Village Connection		
Tap fee	\$ 200	\$ 160,000
Capacity fee	\$ 600	\$ 480,000
Meter fee	\$ 250	\$ 200,000
Inspection	\$ 60	\$ 48,000
	<u>\$ 1,110</u>	<u>\$ 888,000</u>
B-Box Connections		
	\$ 1,500	<u>\$ 1,200,000</u>
		\$ 1,200,000
Service Line Connections		
Service Line Connections	\$ 3,000	\$ 2,400,000
		<u>\$ 2,400,000</u>
Total Cost for the Downers Grove TCE Area		\$ 4,788,000

WATER SERVICE AGREEMENT

This Agreement made and entered into this ____ day of _____, 2003, by and between the Village of Downers Grove, an Illinois municipal corporation (hereinafter referred to as the "Village") and the _____ the owner(s) of record of the property located at _____, Downers Grove, Illinois, (hereinafter referred to as the "Owner(s)").

WHEREAS, the Owner(s) are the owners of record of certain real estate legally described as follows:

(PIN: ____-____-____)

(PIN: ____-____-____)

(Common Address: _____ Downers Grove, Illinois)

(hereinafter referred to as the Property);

WHEREAS, the Village has previously adopted a Village Council Policy establishing procedures for providing water service to the areas commonly known as Downers Grove Gardens, Belmont Park, North Belmont Park, Maple Hill and other areas in DuPage County where there is believed to be contaminated water wells (collectively referred to as "the Primary Service Area", as depicted in Exhibit A, attached hereto and incorporated herein by reference) ;

WHEREAS, the Property is located within the aforementioned area;

WHEREAS, the Owner(s) desire that the Property be connected to the Village water system in accordance with the Village Council Policy;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, terms and conditions herein set forth, the Parties agree as follows:

1. The Village shall connect the Property to the Village water system upon the execution of this Agreement and the submittal of a properly executed New Water Service Permit Application.
2. The Owner(s) shall pay to the Village a connection charge of Two-Thousand Dollars (\$2000.00). If the Property is located within the area

commonly known as North Belmont Park, as more accurately depicted in Exhibit A, the Owner(s) shall not be required to pay said connection charge.

- i. At the option of the Owner(s), the connection charge may be paid, without interest, over a ten (10) year period in sixty (60) equal installments as a surcharge on the bi-monthly water consumption invoice.
 - ii. In the event the Owner(s) elect to pay the connection charge by means of a surcharge on the water consumption invoice, the Village shall file with the DuPage County Recorder of Deeds Office, a notice of lien covering the amount of unpaid water system connection charges, which notice shall contain a description of the property benefited by such water system connection sufficient for identification thereof; the date of connection to the water system; and the existence of a surcharge on water service. Upon payment of the balance due, the Village shall issue a release of such notice of lien, which may be filed by the Owner(s) in said recorder's office.
 - iii. In the event the Owner(s) sell the Property prior to the connection charge being paid in full, the remaining balance due shall become due and owing to the Village, unless such obligation is assigned and accepted by, in writing, to the subsequent purchasers of the Property. The connection charge is a personal obligation and does not run with the land.
 - iv. In the event Owner(s) default on any payment owed to the Village in connection with the Owner(s) water consumption invoice, the full outstanding balance shall become due and owing to the Village. The Village may bring any legal action it deems appropriate to collect any amount(s) owed, after giving notice of such default, including but not limited to water shut-off. The Village shall be entitled to reasonable attorney's fees as part of any judgment rendered in its favor.
3. Owner(s) shall permit the Village, the County of DuPage (County), and their officers, directors, employees, agents, contractors and subcontractors authority to enter onto the Property, including access to any structure thereon, for the purpose of undertaking any inspections, measurements, surveys, investigations, tests, observations, excavations, work, repairs, maintenance, restoration or any other activity related to the connection of the Property to the Village water system, including but not limited to, installing the water service line, the water meter, the sealing of the existing well, etc.

4. All work shall be undertaken in accord with the Project's Contract Documents that comprise the Agreement between the County of DuPage and R. Cleveland U.G. Technologies Corp. ("Contractor") for the Setting and Extension of Prices for Private Water Service Connections in the Downers Grove Primary TCE Area.
5. Owner(s) shall do no act that interferes, delays, damages or adversely affects, in any manner, the Contractor's work, or the installed improvements, including affecting the lateral or sub-lateral support thereof, or any of Contractor's materials or equipment on or about the Owner's(s') property.
6. Owner(s) agree(s) that the Contractor and the County shall have sole discretion in the routing and placement of the improvements and that the work may disturb existing landscaping and vegetation, subject to such restoration as herein specified.
7. Owner(s) acknowledge that the work is for his/her/their/its use and benefit and that the Owner(s) is (are) directly responsible for paying contractor for the work. However, the Owner(s) understand(s) that, by Administrative Order entered between the United States Environmental Protection Agency and certain participating companies, together with other funding sources, an amount deemed sufficient to pay the project expenses (excluding the Village connection charge), is being held in escrow. Further, Contractor must first submit its payment requests to the County (or Village) and only if the Contractor is not paid from said escrow funds may the Contractor make a demand for payment on the Owner(s).
8. The County, the Village and their agents and contractors shall furnish all labor, material and equipment necessary to do the work. The work shall involve the construction and installation of private water service lines at the Property to a point that connects the principal residence (or structure) thereon to existing Village water mains. Such work shall include all incidental work, including but not limited to tank removal, meter span and excavation.
9. The County and its agents and contractors shall have sole discretion in the scheduling of the work, however they shall make a reasonable effort to notify the Owner(s) at least 10 days in advance of the commencement of work on Owner's(s') property.
10. The Village, the County and their agents and contractors shall perform any work hereby authorized with reasonable care, skill and diligence. Work shall be performed in such a way as to avoid harm to improvements adjacent to the work. In the event the work negatively disturbs the

Owner's (s') property, the disturbed area shall be restored as nearly as possible to the condition that existed before the disturbance thereof.

11. The Owner(s) on behalf of all owners and occupants of the Property, waives and releases the Village, the County of DuPage, and each of the participating companies providing funding for the water connection, from all claims pertaining to any such connection and/or groundwater contamination or condition, if any, except for any potential common law claim regarding personal (bodily) injury or property damage.
12. Owner(s) agree to abide by all Village rules and regulations regarding water usage and consumption, including all ordinances, as provided for in Chapter 25 of the Downers Grove Municipal Code, as now or hereafter amended.

OWNER(S)

VILLAGE OF DOWNERS GROVE

By: _____

By: _____

Village Manager

(print name)

Attest: _____

By: _____

(print name)

Subscribed and sworn to before me
this ____ day of _____, 2003.

Notary Public

1\mw\agr.03\water service agreement-fin

ORDINANCE

OHS-001c-02

AMENDMENT TO DUPAGE COUNTY CODE, CHAPTER 18 HEALTH, FOR HOMES LOCATED NEAR THE ELLSWORTH INDUSTRIAL PARK DUE TO CONTAMINATION OF PRIVATE WELLS (THE DOWNERS GROVE WATER IMPROVEMENTS AREA)

WHEREAS, the DuPage County Board, through its Board of Health, has an obligation to protect the quality of the environment and the health, welfare and safety of DuPage County's citizens by providing access to potable water for drinking, bathing and other uses and by providing for safe and sanitary construction and operation of private water supply systems; and

WHEREAS, the DuPage County Board has been informed by the Illinois Environmental Protection Agency ("Illinois EPA") and the United States Environmental Protection Agency ("USEPA") that releases of substances known as chlorinated solvents and volatile organic compounds ("VOCs") have occurred at industrial properties located within the Ellsworth Industrial Park in Downers Grove, Illinois; and

WHEREAS, the results of sampling conducted by the USEPA and Illinois EPA in 2002 demonstrated elevated levels of the VOCs trichloroethylene ("TCE"), tetrachloroethylene ("PCE") and vinyl chloride in the soil and groundwater in the Ellsworth Industrial Park; and

WHEREAS, hydrogeological data compiled by the USEPA indicates that groundwater in the vicinity of the Ellsworth Industrial Park flows generally to the south and southeast; and

WHEREAS, surrounding the Ellsworth Industrial Park are residential areas with schools and approximately two thousand three hundred (2300) parcels (the "affected area", also known as the "Downers Grove Water Improvements Area", a legal description of which is attached hereto as Exhibit A); and

WHEREAS approximately eight hundred (800) of these parcels contain homes, which are located within one and one-half (1½) miles of the Ellsworth Industrial Park, and south to southwest of the Industrial Park and use water from groundwater wells as their sole source of water for drinking, bathing and other potable uses; and

WHEREAS, the USEPA believes that contamination present at the Ellsworth Industrial Park may continue to migrate into the groundwater and cause groundwater contamination levels to rise in wells throughout the affected area; and

WHEREAS, the County has determined that the foregoing circumstances could pose a danger to the public health of those persons living in the affected area, now and in the future, therefore, it is necessary to enact an Ordinance requiring that all homes in the affected area must be connected to a public water supply and that any groundwater wells

must be abandoned and sealed according to the provisions of The DuPage County Code, Chapter 18, Article 18-4, Section 18-4.1.8.B.; and

WHEREAS, the DuPage County Board of Health has approved this Ordinance and recommended its adoption by the DuPage County Board.

NOW, THEREFORE, BE IT ORDAINED by the County Board of DuPage County as follows:

1. The recitals set forth above are incorporated herein and made a part hereof.
2. The owner of every residence in the affected area, as particularly described by Table 1 Part III which is attached hereto and incorporated herein, shall make a connection to a public water supply and shall abandon and seal all wells upon the property whereupon said residence is located, according to the provisions of The DuPage County Code, Chapter 18, Article 18-4, Section 18-4.1.8.B.

BE IT FURTHER ORDAINED that The DuPage County Code, Chapter 18, Article 18-4, Section 18-4.1.8.B., be amended as follows:

TABLE 1

PART III

The boundary for the Downers Grove Water Improvements Area is described as follows:

Beginning at a point, said point being the intersection of the centerline of 63rd Street and Dunham Road as now platted, in the West Half of the Southeast Quarter of Section 18, Township 38 North, Range 11, East of the Third Principal Meridian, for the point of beginning; thence Westerly along the centerline of 63rd Street as now platted, to a point on the Westerly line of Downers Grove Park a subdivision in Section 13, Township 38 North, Range 10, East of the Third Principal Meridian recorded 3-23-1927 as Document # 232126; thence Northerly along said Westerly line of Downers Grove Park to the Southeast corner of the following described property (That part of the Southwest Quarter of Section 13, Township 38 North, Range 10, East of the Third Principal Meridian, described as follows to-wit: Commencing at the Southeast corner of the Southwest Quarter of Section 13: which is also the center line of 63rd Street; thence West along the South line of said Southwest Quarter, a distance of 213.84 Feet, said point being on the center line of 63rd Street, and the West line of Downers Grove Park subdivision extended; thence North 1 Degree 00 Minutes East along the West Line of subdivision known as Downers Grove Park subdivision, a distance of 614.86 Feet for the place of beginning; thence continuing North on said line, a distance of 99.64 Feet; thence North 89 Degrees 00 Minutes West a distance of 821.5 Feet to a point on the Center Line of Hobson Road, as now platted; thence South 47 Degrees 43 Minutes West, along the Center Line of Hobson Road, as now platted, a distance of 145.33 Feet; thence South 89 Degrees, 00 Minutes East a distance of 927.4 Feet to the place of beginning, in DuPage County,

Illinois, commonly known as 08-13-315-001); thence Westerly along the Southerly Line of the previously described property to a point, said point on the Southerly line of Hobson Road, as now platted; thence Northeasterly along the Southerly line of Hobson Road, as now platted, to the Westerly Line of Janes Ave, as now platted; thence Northerly along the extended Westerly Line of Janes Avenue, as now platted, to the Northerly line of Hobson Road, as now platted; thence Southwesterly along the Northerly Line of Hobson Road as now platted to the Westerly Line of Downers Grove Park a subdivision in Section 13, Township 38 North, Range 10, East of the Third Principal Meridian recorded 3-23-1927 as Document # 232126, thence Northerly along the Westerly Line of Downers Grove Park to its Northwest corner: also known as the centerline of 59th Street, as now platted; thence Westerly along the centerline and centerline extended of 59th Street, as now platted to a point on the Easterly Line of I355, as now platted; thence Northerly along the Easterly Line of I355, as now platted to a point on the Southerly Line of Maple Avenue, as now platted; thence Easterly along the Southerly Line of Maple Avenue to the Southwest corner of Walnut Avenue and Maple Avenue, as now platted; thence in a Northeasterly direction to a point, said point being the Northeast corner of Walnut Avenue and Maple Avenue, as now platted; thence Northerly along the Easterly Line of Walnut Avenue, as now platted, to the intersection of the Southeasterly corner of Walnut Avenue and Elmore Avenue, as now platted; thence Easterly along the Southerly line of Elmore Avenue and Elmore Avenue as it turns to the North to the intersection of the Southerly line of Elmore Avenue and Inverness Avenue, as now platted; thence Easterly along the Southerly Line of Inverness Avenue, as now platted, and said southerly line extended to a point on the Easterly line of Belmont Road, as now platted; thence Northerly along the easterly line of Belmont Road, as now platted to the Southerly line of Wisconsin Avenue, as now platted; thence Easterly along the Southerly line of Wisconsin Avenue as now platted to the Easterly line of Arthur T. Mc Intosh's Belmont Farms Resubdivision of Lots 13 & 14, a resubdivision in the Southeast Quarter of Section 12, Township 38 North, Range 10, East of the Third Principal Meridian, recorded on 7-9-1925 as Document # 195882; thence Northerly along the Easterly line and said Easterly Line extended of Arthur T. Mc Intosh's Belmont Farms Resubdivision of Lots 13 & 14 to the Northwest corner of Lot 13 in Arthur T. Mc Intosh and Company's Belmont Farms a subdivision in Section 12, Township 38 North, Range 10, East of the Third Principal Meridian recorded on 1-1-1950 as document # 134268; thence Easterly along a line to the Southwest Corner of Lot 14 in Bending Oaks North, a subdivision in Section 12, Township 38 North, Range 10, and Section 7, Township 38 North, Range 11, East of the Third Principal Meridian, recorded on 6-28-1988 as Document # 068661, thence Northerly along the Westerly Line of Bending Oaks North and its Westerly Line of Lot 14 to the Northwest Corner of said Lot 14; thence Easterly along the Northerly line of Bending Oaks North to the Southwest corner of Lot 55 in Arthur T. Mc Intosh and Company's Highwoods Addition to Belmont a subdivision in Section 12, Township 38 North, Range 10, and Section 7, Township 38 North, Range 11, East of the Third Principal Meridian recorded on 3-10-1924 as Document # 175033, thence Easterly along the Southerly Line of Lot 55 in Arthur T. Mc Intosh and Company's Highwoods Addition to Belmont to the Southeast corner of Lot 55, thence Easterly from the Southeast corner of Lot 55 to the Southwest corner of Lot 24 in Marshall Field Woodland Homes 1st Addition. A subdivision in Section 7, Township 38 North, Range 11, East of the Third Principal Meridian, Recorded on 10-2-1920 as Document # 144597; thence Easterly along the Southerly line of Lot 24 and Lot 6 in Marshall Field Woodland Homes

1st Addition to the Southeast corner of Lot 6 in Marshall Field Woodland Homes 1st Addition; thence Southerly along the Easterly Line of Marshall Field Woodland Homes 1st Addition to a point on the Southerly line of the Southwest Quarter of Section 7, Township 38 North, Range 11, East of the Third Principal Meridian; thence Easterly along the Southerly line of the Southwest Quarter of Section 7, Township 38 North, Range 11 and the Southeast Quarter of Section 7, Township 38 North, Range 11, to a point, said point also known as the Northwest corner of Branigar Brothers Downers Grove Farms a subdivision in Sections 17 and 18, Township 38 North, Range 11, East of the Third Principal Meridian recorded on 1-1-1950 as Document # 144285; thence Southerly along said Westerly Line and Westerly Line extended of Branigar Brothers Downers Grove Farms, said Westerly Line also known as the centerline of Dunham Road to the centerline intersection of Dunham Road, as now platted and 63rd Street as now platted for termination of the boundary for the Downers Grove Water Improvements Area, in DuPage County, Illinois for.

The Downers Grove Water Improvements Area encompasses parts of the following sections:

Lisle Township 08	Section 12 Southwest	Township 38 North, Range 10, East
Lisle Township 08	Section 12 Southeast	Township 38 North, Range 10, East
Lisle Township 08	Section 13 Northwest	Township 38 North, Range 10, East
Lisle Township 08	Section 13 Northeast	Township 38 North, Range 10, East
Lisle Township 08	Section 13 Southwest	Township 38 North, Range 10, East
Lisle Township 08	Section 13 Southeast	Township 38 North, Range 10, East
Lisle Township 08	Section 14 Northeast	Township 38 North, Range 10, East

BE IT FURTHER ORDAINED that the County Clerk shall publish notice hereof and send copies hereof to the Auditor, Treasurer, Finance Department, County Board, Nancy Hauptman-County Board, States Attorney, Leland Lewis-DuPage County Health Department, Environmental Concerns and Human Services.

ENACTED AND APPROVED this _____ day of _____, 2003.

ROBERT J. SCHILLERSTROM, CHAIRMAN
DUPAGE COUNTY BOARD

ATTEST:

GARY A. KING, COUNTY CLERK

Ayes:

Absent:

Three Party Agreement
Executed Signature Pages

**AGREEMENT AMONG THE VILLAGE OF DOWNERS GROVE, DUPAGE
COUNTY AND CERTAIN PARTICIPATING COMPANIES**

PRP: AMES SUPPLY COMPANY

By: 
Robert C. Hildebrandt, President

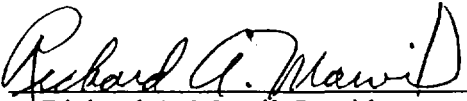
Dated: August 4, 2003

Address for Notice:

John W. Loseman, Esq.
LEWIS, OVERBECK & FURMAN
135 S. LaSalle Street
Suite 2300
Chicago, IL 60603

**AGREEMENT AMONG THE VILLAGE OF DOWNERS GROVE, DUPAGE
COUNTY AND CERTAIN PARTICIPATING COMPANIES**

PRP: WHITE LAKE BUILDING CORPORATION

By: 
Richard A. Marvil, President

Dated: August 4, 2003

Address for Notice:

John W. Loseman, Esq.
LEWIS, OVERBECK & FURMAN
135 S. LaSalle Street
Suite 2300
Chicago, IL 60603

[PRP Arrow Gear Co.]

By: Tamara P. Pickett

Its: EXECUTIVE V.P.

Address for Notice:

[PRP Burn Gear]

By: John Stettin

Its: counsel

Address for Notice:

Vodder Price

222 N. L. Salle Suite 2600

Chicago IL 60601

[PRP Fusionbond Piping Systems Inc.

By: Fusionbond Piping Systems Inc

Its: President Richard H. Krause

Address for Notice:

2615 Curtis

Downers Grove, IL

60515

[PRP] Lindy Mfg
By: David A. Callaris
Its: President

Address for Notice:

Lindy Manufacturing Company
5200 Katrine
Downers Grove, IL 60515

also copy to:

Linda Kurtos
Eimer Stahl Klevern & Solberg
224 S. Michigan Avenue
Suite 1100
Chicago IL 60604

[PRP MAGNETROL INTERNATIONAL

By: Richard J. [Signature]

Its: Executive Vice President

Address for Notice:

[PRP] The Money Corporation

By: Quana Money

Its: Vice President

Address for Notice:

[PRP PRECISION BRAND
PRODUCTS, INC]

By: [Signature] 8/04/03

Its: ATTORNEY AND AUTHORIZED REPRESENTATIVE

Address for Notice:

KARIGAN, WHITE & MAGEE LTD
414 NORTH ORLEANS STREET
SUITE 810
CHICAGO IL 60610

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[PRP PRINCIPAL MFG. CORP.]

By: Paul C. Bennett

Its: PRESIDENT

Address for Notice:

2800 S. 19th Ave.

Broadview, IL 60153

[PRP REWARD CORPORATION]

By: T. R. Wiener

Its: Attorney

Address for Notice:

Todd R. Wiener

McDermott, Will & Embry

227 West Monroe Street

Chicago, Illinois 60606

[PRR SCOT INCORPORATED]
By: [Signature]
Its: PRESIDENT

Address for Notice:

Sachnoff & Weaver, Ltd.

30 S. Wacker Drive - Suite 2900

Chicago, IL 60606

Attention: Edward V. Walsh, III

[PRP TRICON INDUSTRIES, INCORPORATED]

By: 

Its: VICE PRESIDENT - INTERNAL OPERATIONS

Address for Notice:

TRICON INDUSTRIES, INCORPORATED

1600 EISENHOWER LANE

LIBLE, IL 60532

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[PRP]

By:

William F. Hering Jr.

Its:

Address for Notice:

Bischoff Partners, LLC

217 W. Jefferson #600

Chicago, IL 60601

THE
FEDERAL AGENCY

1954

MINISTRY OF REGIONAL
AFFAIRS